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NEW JERSEY CONSTITUTIONAL CONVENTION

THE COURTS OF NEW JERSEY -- PART II
THE 1944, 1942 AND 1909 PROPOSALS

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THE 1944, 1942 AND 1909 PROPOSALS

The purpose of this monograph is to outline the salient features of:

(a) The Judicial Article agreed upon by the Legislature in 1944 and rejected by the people that year.[1]

(b) The Judicial Article proposed in 1942 by the Commission on Revision of the New Jersey Constitution, consisting of Robert C. Hendrickson, Chairman, Walter J. Freund, Crawford Jamieson, James Kerney, Jr., John F. Sly, Walter D. Van Riper and Arthur T. Vanderbilt.[2]

(c) The amendment to the Judicial Article submitted to and rejected by the people in 1909, drawn by a commission consisting of Governors John W. Griggs and Franklin Murphy, Justice Bennet Van Syckel and Messrs. Charles L. Corbin and John R. Hardin.[3]

Of all the proposals advanced since 1844 for the revision of the Judicial Article of the Constitution, the three listed above are most worthy of study.[4]

Consideration is given in another monograph to the matter of the qualifications and tenure of the judges.

A

The 1944 and 1942 Proposals

The 1944 and 1942 proposals follow; except as noted, they are alike:

1. The Supreme Court. Under these proposals the highest court in the State was denominated the Supreme Court. It was to consist of a Chief Justice and six Associate Justices. Besides its appellate functions noticed below, it was given

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1. New Jersey. Revised Constitution for the State agreed upon by the 168th Legislature, 1944. Art. V ("Judicial") and Art. XI ("Schedule"), Sec. IV

2. Report of the Commission on Revision of the New Jersey Constitution, 1942. Art. V ("Judicial") and Art. XI ("Schedule"), Sec. IV.

3. See Schedule A, post

4. For the other proposals, see William W. Evans, "Constitutional Court Reform in New Jersey," 7 Newark Univ. Law Rev. 1.

the power to make rules of practice and evidence applicable to all the courts of the State, and also rules governing the administration of all courts. Under the 1942 proposal (this provision does not appear in the 1944 proposal), whenever the Supreme Court (a) should fail to hear a case within two months after an appeal was perfected, or (b) should fail to decide a case within two months after it had been argued or submitted, the Chief Justice was obliged to certify that fact to the Governor; and the latter was given the authority thereupon to appoint at least five Justices of the Superior Court, to sit as a special term and exercise concurrently the jurisdiction of the Supreme Court until the delay was cured.

2. Appellate Divisions. Two or more Appellate Divisions were established in the Superior Court, as prescribed by rule of the Supreme Court, each Appellate Division to consist of three Justices. Appeals to an Appellate Division were to be taken from the trial Sections of the Superior Court, as designated by rules of the Supreme Court. By setting up at least two Appellate Divisions, the proposal envisaged at least one Appellate Division to hear appeals from each of the two Sections of the Superior Court. Appeals from the inferior courts were to be heard by an Appellate Division or in one of the Sections of the Superior Courts, as provided by law.

3. Further as to Appeals. The Supreme Court and the Appellate Divisions were given authority to set aside judgments, wholly or in part, where the finding of fact was against the weight of the evidence or the verdict excessive or inadequate. Moreover they were authorized to exercise such original jurisdiction as might be incident to the complete determination of the controversy and (under the 1944 proposal) to enter final judgment on a reversal, unless the ends of justice or the right of trial by jury required a new trial. Appeals to the Supreme Court from any court were to be taken only:

(1) in capital cases and cases involving a constitutional question;

(2) in the event of a dissent in an Appellate Division;

(3) on certification by an Appellate Division; or

(4) on certification by the Supreme Court to the Appellate Division or any inferior court of the State.

Prerogative writs were made returnable in an Appellate Division or before a single Justice, which Division or Justice was required to determine, in such manner as the rules of the Supreme Court might prescribe and without a jury, questions of fact arising therein. If the hearing was before a single Justice, his determination, both as to law and fact, was reviewable by an Appellate Division.

4. The Superior Court. The Superior Court, sitting in each county, was given original general jurisdiction throughout the State in all cases; and each Justice thereof was given authority to exercise the full powers of the court, subject to rules of the Supreme Court. Under the 1942 draft, the court was to consist of not less than 25 Justices and under the 1944 draft of not less than 27 Justices. In effect, the business of the Superior Court was to embrace that now attended to by the Court of Chancery; the law courts, namely, Common Pleas Courts, Circuit Courts and the Supreme Court Circuit; the contentious business of the probate courts, namely, the Orphans' Court and the Prerogative Court; and the criminal courts, namely, the Courts of Quarter Sessions, Special Sessions and Oyer and Terminer. The Superior Court was to be divided into

(1) a Law Section to exercise civil and criminal jurisdiction at law; and matrimonial jurisdiction and jurisdiction over 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.

Either Section, however, was required to exercise the jurisdiction of the other

Section when the ends of justice required it.

5. Inferior Courts. Inferior courts could be established, altered and abolished by law, and, if provided by law, integrated with the Superior Court. A Justice of the Superior Court was given authority to exercise the powers of a Judge of any court established by law in the county or counties to which he might be assigned, and moreover to hold any such court with like jurisdiction, as a Judge thereof.

6. Judges. Under the 1942 and 1944 proposals the Governor with the advice and consent of the Senate, was to appoint the Chief Justice and Associate Justices of the Supreme Court, and the Justices of the Superior Court. Under the 1942 proposal he was in like manner to appoint the Judges of any inferior court with jurisdiction extending to more than one municipality; and there was to be provided by law a uniform method of appointing all other Judges. Under the 1944 proposal the Governor was to appoint, with the advice and consent of the Senate, the Judges of all inferior courts, except those Judges elected in, or appointed by the governing body of, any county or municipality when so provided by law. Under the 1944 proposal there was to be at least one Resident Justice of the Superior Court for each county who must be resident in the county, assigned to the Law Section in the county and assignable elsewhere only if his duties in the county should not require his presence there. Except as provided with respect to the Resident Justices, it was incumbent upon the Chief Justice of the Supreme Court to assign the Justices of the Superior Court to counties, Sections and Parts, when they were first appointed to the court and annually thereafter.

Under the 1942 proposal, all Judges in the State were removable for lack of good behavior. The issue of good behavior, with respect to the Justices of the Supreme Court, was triable by the Senate and, with respect to all inferior court Judges, it was triable by the Supreme Court. Under the 1944 proposal the Justices

of the Supreme and Superior Courts were liable to impeachment for misconduct in office under provisions much like those in the 1844 Constitution, except that a conviction in the Senate could be had on the vote of a majority of all the members of the Senate (the 1844 Constitution requires a vote of two-thirds of all the Senators). Under the 1942 proposal, the Governor could, on request of the Chief Justice, nominate and appoint special Judges, by and with the advice and consent of the Senate, for temporary service not exceeding one year whenever and so long as any court failed to hear any case within two months after notice of trial was filed or an appeal perfected; or failed to decide any case within two months after it has been argued and submitted.

7. Administration. The Chief Justice of the Supreme Court was constituted the administrative head of all the courts of the State; he was directed to supervise their work and annually to report thereon to the Governor and Legislature. He was to appoint an executive director whose duty it was to

(1) assist the Chief Justice in all matters related to the administration, finance and personnel of the courts;

(2) publish a statistical record of the judicial services of all courts and judiciary and of the cost thereof;

(3) prescribe records, reports and audits for the inferior courts;

(4) have such other duties as might be delegated by the Chief Justice.

B.

The 1909 Amendments to the Judicial Article

Under the 1909 proposal the following courts were to be established by the Constitution (aside from a court for the trial of impeachments): (1) a Supreme Court, consisting of three divisions, an Appeals Division, a Law Division and a Chancery Division; (2) County Courts sitting in each county; and (3) such

other courts, inferior to the Supreme Court, as might be established by law, which inferior courts could be altered or abolished by law.

1. Appeals Division of the Supreme Court. The Appeals Division of the Supreme Court was constituted the highest bench of the State. It consisted of a Chief Justice and six other Justices. Four Justices constituted a quorum (whereas under the 1942 and 1944 proposals five Justices were necessary to constitute a quorum). To the Appeals Division was granted the appellate jurisdiction possessed by the Court of Errors and Appeals, the Supreme Court and the Prerogative Court, together with such further appellate jurisdiction as might be conferred upon it by law, and also such original jurisdiction as might be incident to the complete determination of any cause before it, saving however the right of trial by jury. Should the number of causes before the Appeals Division not he heard and determined promptly, the Governor, if authorized by statute, was required to assign temporarily five Justices of the Law and Chancery Divisions to sit in the Appeals Division, which thereupon was required to sit in two Divisions.

2. The Law Division and the Chancery Division. The business of the Law Division of the new Supreme Court embraced the original jurisdiction of the present Supreme Court and the Circuit Courts, and such further original jurisdiction not of an equitable nature and such further appellate jurisdiction from inferior courts, as might be conferred by statute. The business of the Chancery Division embraced the jurisdiction of the Prerogative Court, the Court of Chancery and such further original equity and probate jurisdiction as might be conferred by statute. Neither the presiding Justice of the Law Division, styled the President Justice thereof, nor the presiding Justice of the Chancery Division, styled the Chancellor, sat on the Appeals Bench. The Supreme Court was authorized to provide by rule of court for the transfer of any cause from one Division to the other or from the County Court to either Division, and for the giving of complete legal equitable relief in any cause in the court or

division where it was pending.

3. County Courts. The County Courts were made constitutional courts which could not be altered or abolished by the Legislature. To them was granted the jurisdiction exercised by the Courts of Common Pleas, Orphans' Courts, Oyer and Terminer and Quarter Sessions. The final judgment of a County Court was appealable to the Appeals Division.

4. Judges. The Chief Justice of the Supreme Court, the President Justice of the Law Division, the Chancellor and the Associate Justices of the Supreme Court were to be nominated and appointed by the Governor with the advice and consent of the Senate. The Governor was to assign to the Appeals Division the six Justices who, with the Chief Justice of the Supreme Court, made up that bench. The entire Supreme Court was to assign the remaining Justices to the Law or Chancery Division, as the business of the court might require. Any Judge of any of the courts of the State might, by a two-thirds vote of the Legislature, be removed for disability continuing for one year or for refusal to perform the duties of his office.

5. Administration. The 1909 proposal contained no express provisions as to the administration of the courts, worthy of notice here.

Schedule A

AMENDMENTS TO THE JUDICIAL ARTICLE PROPOSED IN 1909
(See Laws 1909, p. 378)

Change section I of Article VI so as to read as follows:

SECTION I.

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.

Strike out all of Sections II, IV, V, VI AND VII of Article VI, change the number of Section III of Article VI to Section II, and insert the following sections in Article VI:

SECTION III.

Any judge of any of the courts of the State may be removed for disability

continuing for one year, or for refusal to perform the duties of his office, by a vote of two-thirds of all the members of the Senate and of two-thirds of all the members of the House of Assembly voting separately, after a hearing before both Houses in joint session.

SECTION IV.

1. The Supreme Court shall be organized in three divisions, namely, the Appeals Division, the Law Division and the Chancery Division. It shall consist of a Presiding Justice of the Appeals Division who shall be styled the Chief Justice, a Presiding Justice of the Law Division, who shall be styled the President Justice, and a Presiding Justice of the Chancery Division, who shall be styled the Chancellor, and eighteen Associate Justices, which number may be increased by law.

2. The Appeals Division shall consist of the Chief Justice, and six other Justices of the Supreme Court to be assigned by the Governor. A Justice of the Supreme Court assigned by the Governor to the Appeals Division shall serve in said division until the end of his term.

The remaining justices shall be assigned by the Supreme Court to the Law or Chancery Division, as the business of the Court may require.

3. Whenever the number of causes before the Appeals Division shall be so great that the Division cannot promptly hear and determine them, the Governor shall, when authorized by statute, temporarily assign five of the justices of the other divisions to sit in the Appeals Division, which shall thereupon sit in two divisions for the hearing and decision of causes pending at the time of such assignment.

4. Four justices shall be necessary to constitute a quorum on the final hearing of any cause in the Appeals Division, but the Supreme Court may provide by rule for the making of interlocutory orders by a lesser number of justices or by one justice; such orders to be subject to revision by the Appeals Division.

On the hearing of a cause in the Appeals Division, no justice who has given a judicial opinion in the cause in favor of or against the judgment, order or decree under review shall sit at the hearing to review such judgment, order or decree, but the reasons for such opinion shall be assigned to the Court in writing.

5. A majority of all the members of the Supreme Court, to be presided over by the Chief Justice, shall constitute a quorum for the assignment of justices, and for the appointment of officers, and the enactment of rules.

6. The Supreme Court shall appoint one or more reporters, not exceeding three, to report the decisions of the Court, and shall by rule define his or their duties and powers. The reporters shall hold office for five years, subject, however, to removal at the discretion of the Court.

SECTION V.

1. The Appeals Division shall have and exercise the appellate jurisdiction heretofore possessed by the Court of Errors and Appeals, the jurisdiction heretofore possessed by the Supreme Court on writ of error, and the jurisdiction

heretofore possessed by the Prerogative Court on appeal, and by the Ordinary on appeal, and such further appellate jurisdiction as may be conferred upon it by law, together with such original jurisdiction as may be incident to the complete determination of any cause on review, saving, however, the right of trial by jury.

2. The jurisdiction heretofore possessed by the Supreme Court and the Justices thereof not hereby conferred on the Appeals Division, and the jurisdiction heretofore possessed by the Circuit Courts and the judges thereof, and such further original jurisdiction not of an equitable nature, and such further appellate jurisdiction from inferior courts as may be conferred by statute, shall be exercised by the Law Division of the Supreme Court and by the several justices thereof, in accordance with rules of practice and procedure prescribed by statute, or in the absence of statute by the Supreme Court.

3. The jurisdiction heretofore possessed by the Prerogative Court and the Ordinary, not hereby conferred on the Appeals Division, and the jurisdiction heretofore possessed by the Court of Chancery and the Chancellor, and such further original equity jurisdiction as may be conferred by statute, and such further original jurisdiction as is now conferable on the Prerogative Court shall be exercised by the Chancery Division and by the Chancellor and the several justices of said division 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 that division shall be under such control and supervision by the Chancellor as shall be provided by the Supreme Court.

4. Terms of the Supreme Court presided over by a single Justice of the Law Division for the trial of issues joined in or brought to the Law Division of the Supreme Court shall be held in the several counties at times fixed by the Supreme Court. Until so fixed, such trial terms shall be held at the places and times now fixed by law for the holding of the Courts of Common Pleas in the several counties.

5. The Supreme Court may provide by rule for the transfer of any cause or issue from the Law Division to the Chancery Division, or from the Chancery Division to the Law Division of the Supreme Court, and from the County Court 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.

6. Nothing herein contained shall prevent the alteration, by law, of any statutory power or jurisdiction conferred upon any court or judge since the adoption of the Constitution in the year one thousand eight hundred and forty-four, and nothing herein contained shall prevent the Legislature from conferring upon any inferior court which may hereafter be established such power or jurisdiction as was exercised by or which may now be conferred upon the inferior courts mentioned in section I of Article VI of the Constitution of 1844.

SECTION VI.

The County Courts shall have and exercise, in all cases within the county such original common law jurisdiction concurrent with the Supreme Court, and such other jurisdiction heretofore exercised by courts inferior to the Supreme

The County Judges shall not be less than thirty years of age, and shall have been practicing attorneys in this State for at least five years. They shall hold office for the term of five years; shall at stated times receive for their services such compensation, which shall not be diminished during their term of office, as the Legislature in its discretion shall fix for each county, and they shall hold no other office under the government of the State or of the United States, and shall not engage in practice of the law in the courts of the county where they hold court during their term of office. The judges of the Common Pleas in office when this amendment takes effect shall be the judges of the County Courts until the expiration of their present terms.

3. This amendment shall take effect on the first Monday in February, in the year next following its adoption by the people.

4. The Legislature shall pass all laws necessary to carry into effect the provisions of the constitution and this amendment thereof.