ST. LOUIS LAW REVIEW

Vol. VII | Published by the Undergraduates of the Washington University School of Law | No. 3

THE ARTICLE ON JUDICIARY IN THE CONSTITUTION OF MISSOURI.

In an address delivered recently in this city, Dr. Isidor Loeb, Dean of the Faculties of the University of Missouri, than whom there is no one better informed on the constitutional history of this State, speaking of the Constitutional Convention which is to meet during the year, pointed out that the articles on the Judiciary, on Taxation, and on Education, contained in the Constitution of 1875, were those most urgently calling for revision. Lawyers, of course are interested in all the provisions of the Constitution, but that relating to the Judiciary probably comes nearer home to them than any other. That there will be differences of opinion in the profession as to the proper action to be taken by the Convention with relation to this article is a foregone conclusion, and it can be safely predicted that there will be a great variety of views, extending from that of the very conservative, who will object to any change, to that of the radical, who would not be content with freely using the pruning knife, but would uproot the present judicial system and construct an entirely new one. There is no doubt that this article in the new Constitution will be written by the lawyers of the Convention, who will be considerably influenced by the views of their professional brethren throughout the State,

and it is therefore very important that the lawyers consider this matter calmly and dispassionately, and if it is concluded that changes are necessary or advisable, care should be taken to make only such changes as our experience shows to be necessary, and study of what has been done in other places satisfies us will be practicable.

As is well known, the present article on the Judiciary has been amended several times, and presents the appearance of a building to which additions have been made and which has undergone some repairs. To carry out the figure, the question arises, does the building as it now exists meet our requirements, or can it be made to meet them by further additions and repairs, or would it be the part of wisdom to remodel or reconstruct it entirely? This is a large and important question, to answer which it is necessary not only to determine to what extent the present structure has answered our purposes, and further whether, granting it is defective, we have the wisdom to plan and execute something better. The objections that are commonly urged against the administration of justice in this state are three:

1st. That the administration of justice is slow.
2nd. That it is unnecessarily expensive.
3rd. That there is so much uncertainty about the law.

It must be obvious that such uncertainty adds both to the delay and expense of administering justice. Are these objections well founded, and if so, to what extent are they due to our judicial system, and if due to a considerable extent to the system itself, then what changes can be made in it which will reduce them to a minimum? That there is uncertainty in the law cannot be disputed. That such uncertainty is to a considerable extent unavoidable is equally clear; but I think it will be agreed that something can be done to reduce this uncertainty. That there are delays is equally clear, as is also the fact that they are caused in most instances perhaps by circumstances over which the courts have no control, and which no change in system would

remedy. Take, for instance, cases of delays in *nisi prius* courts. As is well known, courts are continually confronted by accidental causes, such as illness on the part of counsel, litigants or witnesses, conflicting engagements of counsel, agreements to continue, etc., which have no connection whatever with the court system, and are to a large extent unavoidable. The fact remains, however, that parties anxious to try their cases are often compelled to wait because of the congested condition of the dockets, and by dilatory tactics which, unfortunately, the law makes possible.

As to the expense, there can be no doubt that uncertainty in the law itself, and delays, increase costs; and to the extent that the former can be reduced the latter will also decrease. The claim that the uncertainty and delay, and consequently increased costs, are due to a considerable extent to our court organization, to the system itself, is not a new one, as appears from the fact that the subject has received very careful consideration at the hands of the American Bar Association, and as long ago as 1909, a special committee of that body,* having considered the question of the judicial organization then existing in the various States, recommended a unified court system and proposed as the principle upon which such system be organized the following:

"The whole judicial power of each State, at least for civil causes, should be vested in one great court, of which all tribunals should be branches, departments or divisions. The business as well as the judicial administration of the court should be thoroughly organized so as to prevent not merely waste of judicial power, but all needless clerical work, duplication of papers and records, and the like, thus obviating expense to litigants and cost to the public."

*This committee was composed of the following well known lawyers: Everett P. Wheeler, Chairman, Henry D. Estabrook, Roscoe Pound, Edward T. Sanford, Charles F. Amidon, Charles E. Littlefield, Joseph Henry Beale, Charles S. Hamlin, Frank Irvine, Charles B. Elliott, Samuel C. Eastman, George Turner, William E. Mikell, John D. Lawson, William L. January.

In recent years the American Judicature Society, whose object is to promote the efficient administration of justice, accepting this as the true principle, has had a corps of experts at work preparing a draft of a judicature act and also of amendments to the State constitutions, which have been considered, by constitutional conventions held in several of our States, but have thus far failed of adoption.

At the October, 1921, meeting of the St. Louis Bar Association a special committee, charged with the duty of considering proposed amendments to the State Constitution, made its report, in which it recommended, in general terms, the establishment of a unified court system for this State, and this recommendation was approved by the Association in principle. Unfortunately, no definite plan was proposed, and personally I am of the opinion that such general recommendation will not result in the Constitutional Convention or its committee undertaking the arduous task of drafting constitutional provisions, to carry into effect this general recommendation.

The Missouri Bar Association, at its meeting in 1920, appointed a special committee on Constitutional Amendments, and a sub-committee was given charge of this particular article. Unfortunately, the sub-committee was unable to made a definite report to the general committee in time for it to consider the matter and report to the meeting of the Association, held at Kansas City in December of 1921, so that nothing definite has resulted as yet, but the committee has been continued in force, with authority to consider the subject further and report at a later meeting of the Association. It may well be that such meeting will be held before the Constitutional Convention has advanced with its work so that it will have the benefit of whatever recommendations the Missouri Bar Association may be prepared to make in the matter. The sub-committee made a tentative draft of a report, which no doubt will require careful pruning and revision before it can be seriously considered, as the article

there proposed goes into minute details, instead of merely laying down some general plan.

It seems to me that the great difficulty in the matter of reaching a satisfactory conclusion as to the extent to which this article of the Constitution should be amended, and the form which the amendment shall take, will be found in the fact that so few members of the profession or the judiciary have the time at their disposal to give the subject proper study and attention. The great majority of lawyers are so occupied in their office work, and in the preparation and trial of cases, and the judges are so pressed (if not oppressed) with the amount of work devolving upon them, that it will remain for a few who have the time, the inclination and industry, as well as judgment and ability, to take a complete survey of the whole situation and not only ascertain where the trouble lies, but what is much more difficult, devise some practical form of remedy. The work and recommendations of individuals will not have anything like the weight that would be given to the recommendations of such an organization as the Missouri Bar Association or the St. Louis Bar Association, especially if these recommendations contained something definite and concrete, rather than the mere endorsement of a principle; unless, indeed, the recommendations came from persons whose standing at the bar was such as to command attention and respect.

As stated in the early part of this article, the American Judicature Society has done a vast amount of work on a plan of a judicial system designed to do away with the evils existing at present, and the publications of that Society contain a fund of information which would greatly lighten the task of such as are willing to investigate the subject and give the time and study necessary to the preparation of an article on the judiciary for our Constitution which will be in the line of a natural evolution, yet not so radical or revolutionary as to arouse violent opposition, and therefore make defeat inevitable.

That there is a strong feeling that there should be changes in our judicial system which will put the administration of justice on a more business-like basis is apparent, from the fact that a bill is now pending in Congress for an increase in the number of Federal judges, which also provides for a council of judges, and for transfer of judges from place to place, as the exigencies of judicial business may require, a bill which has the warm support of Chief Justice Taft and other leaders of thought in our profession. So far as the judicial system of this State is concerned, I have long thought that our system of a supreme court and three courts of appeals as it now exists is unfortunate. With the three courts of appeals only too often disagreeing with each other, and the judges of these courts disagreeing among themselves, with the result of a certification of many causes to the supreme court for final decision, and with frequent dissents in the divisions of the supreme court, resulting in transfers of cases to the court en banc, there is much delay and uncertainty. Then the fact that there is no provision made for transferring cases from one of the courts of appeals which may be overcrowded with work to another which may be quite up with its docket seems to be a defect which might easily be remedied. The three courts of appeals might well be merged with the supreme court, which could then sit in five divisions of three judges each, leaving the chief justice to be a real executive of the court, with wide authority to distribute its business, which might afford considerable relief. Three of the divisions might sit in different cities than the State capital, as at present. This would leave three divisions of three judges each sitting at the State capital, and also the Chief Justice. One of these divisions would be the division for criminal appeals. The remaining two might well have assigned to them a portion of the civil appeals, and sit together as the Supreme Court in banc, with the Chief Justice presiding, to pass upon all cases certified by the different divisions. The commissioners, such as have been appointed to assist the Supreme Court and the St. Louis

Court of Appeals, might be entirely done away with, and a provision might well be made authorizing the Chief Justice, in case of need, to draft circuit judges to act for a time in the supreme court. The Chief Justice certainly should be able to select from the many experienced circuit judges in the State men who could render as efficient service as commissioners selected from the bar. It seems to me that in cases of disagreement in the divisions time and expense might be saved by the divisions at once certifying the case to the court in banc, with a brief statement of the point upon which the judges differed, together with the abstract, statements and briefs already filed. No reason occurs to me why the judges of all the divisions of the Supreme Court should not meet together in conference for an interchange of ideas twice a year (say the last week in December and the first week in July). Such conferences would probably not require more than a week's time, and might well be productive of much good. Some provision might be made authorizing the Chief Justice to require circuit judges to temporarily serve in circuits other than their own, a power which would have to be cautiously exercised to be sure, but which the Chief Justice might well be entrusted with, as he would naturally be a man of sound judgment and wide experience.

These are merely suggestions occurring to me, and are given for what they are worth. I hope they may suggest some changes which can be made in our Constitution which, while not being so far reaching as to arouse the distrust of the conservative element, will nevertheless be able to bring about a considerable measure of improvement. We all owe a duty to our State, and the lawyers especially should give their best efforts to find a solution to the great problem confronting the Constitutional Convention.

J. HUGO GRIMM,
Judge, Div. No. 13 of the Circuit
Court of the City of St. Louis, Mo.