FOREWORD

This issue of the LAW QUARTERLY is devoted entirely to an analysis of Missouri decisions relating to appellate jurisdiction. It is elementary, of course, that, on appeal, certain cases go direct to the Supreme Court of Missouri while others go to the appropriate Court of Appeals. The Constitution of 1945 specifies the types of cases as to which the Supreme Court "shall have exclusive appellate jurisdiction."[1] It also provides that the Courts of Appeals shall have jurisdiction of appeals in all cases "except appeals within the exclusive jurisdiction of the supreme court."[2] Accordingly, the Supreme Court has frequently stated that it is a court of limited appellate jurisdiction while the Courts of Appeal are courts of general appellate jurisdiction.[3]

This division of appellate jurisdiction stems from the Constitution of 1875 as it was amended in 1884. The purpose of creating the Courts of Appeals and dividing appellate jurisdiction between them and the Supreme Court was to expedite the disposition of appeals. A degree of flexibility in the distribution of case loads was provided in the constitutional provision authorizing the legislature to change the amount in those cases where the jurisdiction of the Supreme Court is based upon the "amount in dispute."[4] The equalization of work loads between the Supreme Court and the various Courts of Appeals has been of continuing concern to the Supreme Court and to the Missouri Bar.

Over the years, the Supreme Court has guarded its exclusive appellate jurisdiction very carefully—not against encroachment, since this has seldom been necessary, but against enlargement through its own process of interpretation. Within the framework of the constitutional provisions, the Supreme Court is the final arbiter of its own appellate jurisdiction. It has exercised this power with considerable restraint. The Court has said at various times and in various ways that it must preserve its constitutional integrity and not arrogate to itself jurisdictional authority which was not constitu-

---

1. MO. CONST. art. V, § 3.

2. MO. CONST. art. V, § 13.

3. See, *e.g.*, Fowler v. Terminal R.R. Ass'n, 363 S.W.2d 672, 674 (Mo. 1963), decided by Division Two, three members of which dissented.

4. MO. CONST. art. V, § 3: "The supreme court shall have exclusive appellate jurisdiction . . . until otherwise provided by law, in all cases where the amount in dispute, exclusive of costs, exceeds the sum of seventy-five hundred dollars."

The amount was increased to fifteen thousand dollars in 1959 by Mo. Laws 1959, S.B. 7 (now MO. REV. STAT. § 477.040 (1959)).

tionally intended.[5] While this approach should, in general, be commended, it has resulted in a strict, if not restrictive, view of its own jurisdiction.

How well has the method of dividing the original, appellate jurisdiction of cases between the Supreme and the Courts of Appeals worked in actual practice? The discussions contained in this issue of the LAW QUARTERLY and the examination of hundreds of decisions involving jurisdictional questions suggest that the answer to this question is "not very well." Over the years, a substantial number of cases have been transferred between the Supreme Court and the Courts of Appeals on jurisdictional grounds.[6] Such transfers involve delay and additional expense to the parties. In the aggregate, they involve significant time and judicial effort which is devoted to the decision of jurisdictional questions rather than decisions on the merits. In some instances opinions written on jurisdictional questions indicate that the Court studied substantial portions of the transcript before reaching a conclusion that it lacked jurisdiction.

In guarding its exclusive jurisdiction, the Supreme Court has developed rules and principles which are sometimes difficult for members of the Bar to understand and apply. At least, this would appear to be so since it is not reasonable to assume that in most instances counsel have directed appeals to the wrong court through ignorance, careless neglect or inadvertence. There are some decisions in which the Court seems to have exercised jurisdiction in order to reach the conclusion that it had no jurisdiction.[7]

By focusing attention on problem areas, this issue of the QUARTERLY should encourage additional study of methods to improve the existing system of divided jurisdiction or to devise a satisfactory substitute for it. It is obvious, of course, that if there were only one Appellate Court in Missouri to which appeals were directed, there would be no problems of jurisdiction such as exist now. Accordingly, it has been suggested that the Courts of Appeals be abolished by merging them into the Supreme Court. Such a system would contemplate a Supreme Court with divisions located at Jefferson City, Kansas City, St. Louis and, possibly, Springfield. The Court en Banc would sit at Jefferson City where the Court's administrative office would also be located. The Court en Banc would consist of a limited rotating number of judges representing each division of the Court.

---

5. See, *e.g.*, Ashbrook v. Willis, 338 Mo. 226, 228-29, 89 S.W.2d 659, 660 (1936).

6. MO. CONST. art. V, § 11 stipulates that want of appellate jurisdiction is not ground for dismissal but the proceeding shall be transferred to the appellate court having jurisdiction.

Prior to the adoption of the present Constitution such transfers were directed by statute. See Mo. Laws 1885, at 121.

7. *E.g.*, Fowler v. Terminal R.R. Ass'n, 363 S.W.2d 672 (Mo. 1963).

This is but one of several possible approaches. Certainly, it should be possible to improve, in some way, the existing system. This is a problem which should challenge the attention of the Bench and the Bar.

FRANK P. ASCHEMEYER*

---

* LL.B. 1924, Washington University. Member, American, Missouri and St. Louis Bar Associations. Fellow, American Bar Foundation. Received alumni citation from Washington University in 1960. Lecturer in Family Law, Washington University School of Law, 1943-1964. Commissioner of Missouri Supreme Court, 1950-1951. Vice-President and General Counsel, General American Life Insurance Co. of St. Louis, Mo.