EIGHTY-THIRD LEGISLATURE

Senate Document **No. 3**

In Senate, Jan. 13, 1927.

Mr. Oakes of Cumberland presented, out of order, and under suspension of rules, within address and moved that same be incorporated with report of Recess Committee on Courts and Court Procedure, and that 1000 copies of both papers be printed.

ROYDEN V. BROWN, Secretary.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND TWENTY-SEVEN

REPORT OF RECESS COMMITTEE ON COURTS AND COURT PROCEDURE

To the Honorable Senate and House of Representatives:

The Recess Committee authorized by order of the 82nd Legislature to make a survey of our courts and report what changes, if any, would be desirable in our present system of courts and judicial procedure to secure greater efficiency, beg leave to submit the following report:

The following is the text of the order creating the Committee:

> *Ordered,* the Senate concurring, that a recess committee, to consist of the Chief Justice of the Supreme Judicial Court, one member appointed by the Governor, two members appointed by the President of the

Senate and three members appointed by the Speaker of the House, be named whose duty it shall be to consider the advisability of any additional courts, or a combination of the existing courts, having in view the expedition of court procedure, and to consider in connection with the above the advisability of an appellate court of law, a combination of the various superior courts of the state and the unifying of jurisdiction of procedure in the various inferior courts.

It is further ordered that said committee shall report, with its recommendations, to the Eighty-third Legislature.

It is further ordered that any vacancies in said committee shall be filled by the Governor.

In pursuance of the above order, the Governor appointed as a member of the Committee Hon. William B. Skelton of Lewiston; the President of the Senate appointed Hon. Benedict F. Maher of Augusta and Hon. J. Blaine Morrison of Phillips; and the Speaker of the House appointed Hon. Albert M. Spear of Augusta, Edgar M. Simpson, Esq., of Bangor and Raymond M. Oakes, Esq., of Portland.

Following their appointment, the Committee met and organized with the selection of Chief Justice Scott Wilson as Chairman and Raymond M. Oakes, Esq., as Secretary.

With a view to first obtaining the sentiment of the Bar throughout the state and to some extent the viewpoint of the average lay, or business man, the Committee sent to many of

the leading lawyers in various parts of the state requests for their views as to any lack in our judicial procedure or present system of courts and for suggested changes to secure greater efficiency and more speedy and certain justice; members of the Committee, also as opportunities presented, conferred with business men to obtain their viewpoint as to any lack in the administration of justice under our present system.

The Committee, composed in part of members of the Bar, of experience in the trial of cases, both at law and in equity, and in part of members of the Bench, also drew upon their own personal experience after making a survey of our present system of courts and a comparison with the systems in operation in other states. Communications and suggestions also have been received from members or representatives of the various courts.

The Committee, without funds, and made up as it is of men without leisure time, has nevertheless held numerous meetings and made as complete a survey of our entire judicial system as time and opportunity has permitted.

At the outset, for the benefit of the lay members of your Honorable Bodies, the distinction between the law and equity jurisdiction of the court should be clearly drawn, as the growing importance of the equity work must be emphasized in considering any changes or needed changes in our courts. The work on the law side is familiar to the public and done chiefly in term time with a jury as the trier of facts; the equity work is practically all done by a judge sitting without a jury, or in

chambers, where he has the entire responsibility. The court is always open to the suitor in equity. In the more populous centers, it has already overshadowed in importance the work of the trial courts. Larger amounts are involved. It is not unusual for hundreds of thousands and even millions of dollars to be involved in suits in equity. The winding up of insolvent banks, the foreclosure of trust mortgages of railroads and other public utilities, the construction of wills, the issuing of injunctions, and all fiduciary relations, and many other important questions are cognizant by a single judge sitting in equity.

PRESENT COURTS

Our courts as at present constituted are made up: first, of a Supreme Court, composed of a Chief Justice, and seven Associate Justices doing appellate, trial, and equity work; of local Superior Courts in the four most populous counties, doing only trial work, and, except in a few matters having equal or concurrent jurisdiction with the Supreme Judicial Court in their respective counties, but without equity powers, and created from time to time to afford local relief to the Supreme Judicial Court from trial work; Probate Courts in the several counties originally created for the settlement of estates and the appointment of guardians, but more recently given equity powers as to the interpretation of wills, though seldom invoked, and jurisdiction over the care and custody of children when the parents have separated; municipal or police courts, and trial justices for the disposition of civil matters involving small

amounts, and the hearing of complaints of violation of the criminal laws,—some local, some of county-wide jurisdiction and some confined to districts composed of several towns, but with little uniformity in jurisdiction.

HISTORY OF COURTS

The origin and history of these several courts and a survey of their relations to each other discloses that they hardly merit the application of the term, "judicial system," in that they were not created at one time as a single coordinated system, but, to a large extent, are the result of additions from time to time to meet some local demand or to afford relief to the Supreme Judicial Court.

The Constitution of the state provides that the judicial power of the state shall be vested in a Supreme Judicial Court and such other courts as the Legislature may establish.

At the organization of the state government, there was created in addition to a Supreme Judicial Court, the membership of which was fixed at three, a Circuit Court of Common Pleas; Probate Courts in the several counties, and Justices of the Peace having certain judicial powers in small matters, now exercised by trial justices.

The Supreme Court acted both as an appellate and a trial court, while the Circuit Court of Common Pleas, afterward designated as the Court of Common Pleas, acted solely as a trial court, with practically the same jurisdiction as our present Superior Courts, except that it extended to every county.

In 1825, police or municipal courts were created in Portland,

Bath, and Bangor with jurisdiction extending over the entire respective counties of Cumberland, Lincoln, and Penobscot.

In 1839, for some reason the Court of Common Pleas was abolished and the state was divided into three districts, and courts termed District Courts with the same jurisdiction as the Court of Common Pleas for each district were created. These courts lasted until 1852, when the District Courts were abolished and the Supreme Court was increased to eight members and took over all the trial work.

But the entire work, both appellate and at *nisi prius* in course of time became too onerous for the Supreme Court alone, and in 1868, a Superior Court with concurrent jurisdiction at law in most matters, was created in Cumberland County; and in 1878 a similar Court was created in Kennebec County, in 1917, in Androscoggin County, and in 1919, in Penobscot County. The Supreme Judicial Court still holds trial terms in each of these counties, but its work has been very materially lessened. It still has exclusive jurisdiction in these counties in certain matters like actions involving title to, or interests in real estate, probate appeals, and, of course, all matters in equity. The Superior Courts are strictly local courts. The judges sit only in their own court, except that, under certain conditions, the Chief Justice may assign a Superior Court judge in one county to sit in another.

In the meantime, municipal or police courts, and district courts, so-called, have increased in number, and in many instances with enlarged jurisdiction, both as to territory and

amounts involved in civil actions, either to meet some local demand or to relieve the higher courts and to secure more speedy determination of small matters; and trial justices have taken over the judicial powers of the old Justice of the Peace.

CIVIL PROCEDURE

A survey of the practical working of the several courts discloses no serious ground of complaint on the law side as to the manner in which civil cases are disposed of in the trial courts. While our civil procedure is based on the common law, technical objections are not favored. The technicalities of the common law pleading have been largely abolished and amendments in all civil actions are freely allowed.

In general, so far as the fixed terms permit, hearings can be had whenever the parties themselves are ready. The only matter to which your attention need be directed is to the unequal and onerous burden now imposed on the Judge of the Superior Court of Cumberland County as compared with that of the other Superior Courts. The Judge of the Superior Court in that county holds nine terms each year which cover nearly ten months of almost continuous sessions. While under the statute a Superior Court judge, or an active retired judge of one of the Superior Courts, may be assigned to assist the Judge in Cumberland County when necessary,—which is occasionally done,—the Judge of that court is not of the temperament that calls for aid simply for the purpose of equalizing his labors with others, but only when he feels that the interests of litigants and the public require it.

CRIMINAL PROCEDURE

In the disposition of criminal matters, there is more ground for complaint. Technicalities in criminal procedure still prevail. Means of securing delays are numerous. The constitutional safeguards established by our forefathers to make personal liberty secure and protect the innocent against unfounded accusations and unjust punishments are too often, by skillful and resourceful attorneys, turned into almost invulnerable defences to save the guilty from his just deserts.

Defective complaints and indictments are amendable only in matters of form. Advantage of defects plainly apparent, when pointed out, may be taken under a motion in arrest of judgment made after verdict of guilty, and the state put to the expense of a second indictment and trial with the consequent delay of justice; which generally is in interest of the guilty respondent.

Though a respondent may sit silent throughout the trial, the state's attorney may not even comment on his failure to take the witness stand, and the Court is obliged to instruct the jury that he is presumed to be innocent and that the fact that he does not tell his story must not in the minds of the jury be permitted to weigh against him. His silence out of court in the face of statements imputing guilt may be shown as evidence of his guilt, but his silence before the jury is now excluded from their consideration.

The demand for reform in criminal procedure is widespread, —some of it, no doubt, hysterical, the unreasoning demand of the mob for vengeance and swift punishment; but thinking

men, students of the law, conservative in judgment, are recommending certain changes in our criminal procedure to prevent unnecessary delay and the frustration of justice through technicalities.

Further survey also discloses that in five counties, and one, the large and growing county of Aroostook, and which has a large criminal docket, only two terms a year are held, at which persons accused of crime can be tried. A person accused of an offense committed in May must, in Aroostook County, wait until November before even a grand jury sits to inquire into the charge, and in the ordinary course of events until December before he can have a trial before a jury to determine his guilt or innocence. If he can not obtain bail, he must lie in jail even though a grand jury might eventually find no bill or a traverse jury find that he was not guilty. In Piscataquis, Hancock, Lincoln, and Washington counties, six months elapses between terms at which criminal cases can be heard. Every person accused of crime is entitled by the constitution to a speedy trial; and surely the public interest is not served by such delays in administering justice.

MUNICIPAL AND DISTRICT COURTS

In the municipal and district courts, there is a confusing lack of uniformity in jurisdiction and in some instances overlapping of jurisdiction may at times well cause friction. There seems to be no good reason why two courts of this grade should have concurrent jurisdiction in the same territory. Where it exists, one or the other court could as well be dispensed with and one

court do the work with less expense. Trial justices should not hear cases in a jurisdiction covered by a municipal or district court. It may be essential that they should be continued in large districts covered by a district or municipal court to issue warrants on complaints, to be made returnable in all cases before the municipal or district courts.

EQUITY WORK

The marked increase in the work of the Supreme Judicial Court sitting in equity is yearly imposing a greater and greater burden on the Justices of that court located in the populous centers. This burden has already become so heavy in certain sections as to seriously interfere with the full performance of the appellate duties of the local judges.

Few members of the Bar, even, realize the rapid increase of the work in this branch of the law during the last twenty-five years, and, of necessity, how unevenly the burden rests under our present system of courts. During the first five years of our existence as a state, there were only five cases entered in court in Cumberland County on the equity side, and the jurisdiction of the Court was limited to a few subjects. Its jurisdiction was gradually extended, but it was not until over fifty years later, in 1874, that the Supreme Judicial Court was given full equity powers.

Even then it was infrequently resorted to. From 1885 to 1890 an average of only thirty-five causes in equity were annually entered in Cumberland County. From 1895 to 1900, they increased to an average of sixty-five per year, while in the

last five years there was a yearly average of one hundred and ninety-seven entries in this county alone. The total causes in equity entered in the last three years in Cumberland and York counties nearly, if not quite, equal the total of the entries in all the other fourteen counties during the same period. The very large proportion of the equity work is in the counties of Androscoggin, Cumberland, Kennebec, Penobscot, and York. This burden has doubled in the entire state, and in Cumberland County has nearly trebled in the last two decades.

In one respect, equity work is of necessity largely local. The cases that can be disposed of at a single hearing are few. Attorneys naturally desire to take them up before a local Justice who is easily accessible and have him continue throughout the case. From one to—perhaps in receiverships—twenty-five or more interlocutory decrees may be required in a single proceeding in equity. For this reason it is not always practical to call in non-resident Justices from a distance to hear causes in equity, and it is generally essential that the Judge first hearing the cause should continue throughout.

APPELLATE WORK

All things considered, the appellate work of the Court so far has been kept up without unreasonable delay. It, however, requires uninterrupted opportunity for study and thought, and constant interruptions for equity work render it extremely difficult to do satisfactory opinion work. Any unusual delays in the appellate work may generally be accounted for by some temporary conditions. At least the greater part of it is due

to the system under which the members of the Court perform their appellate duties. So far as disposing of the appellate work is concerned, there are virtually but two law terms a year: the June terms, one of which always extends well into July, and the December term. Approximately one hundred cases are argued at the June terms and fifty in December.

A law case is not, however, finally disposed of when argued, or even at the consultation which always follows. Nor can the fifteen or more cases falling to each Judge in June all be decided at once. Each must be taken in its turn and examined with care. The opinion written must then go the rounds to all the other Judges sitting at the arguments for examination and concurrence. A Judge who writes twenty-five opinions during a year has one hundred and twenty-five more of his associates to examine for concurrence. A disagreement necessitates the opinion going back to the writer and if he still adheres to his opinion, it must again go the rounds to each Justice for concurrence, and perhaps be held for a final consultation before it is disposed of. Delays of six months or even more in some of the appellate cases, therefore, can not be prevented under the present system of what in effect are two law terms a year.

PERSONNEL OF COURTS

As to the personnel of the courts, little comment is required. The character and integrity of the Maine Courts have never been questioned. The standing of its Judges in the past has been second to none. It is, however, becomingly increasingly

difficult to prevail upon men in the larger cities where the burden of the equity work now falls heaviest, who are qualified to sit in the highest courts, to abandon the practice of the law, which under modern conditions offers so much greater financial returns than a position on the Bench.

JURY SYSTEM

Next to a high standard of the Judges as to ability and integrity is the quality of jurors. Under our system of jurisprudence, the jury becomes a part of the Court and an extremely important part. As sole triers of the facts, it is upon their judgment and capacity to weigh evidence that the quality of much of the justice meted out in trial courts depends.

Under the present method of selecting jurors, the names of outstanding business men of wide experience seldom, if ever, appear on the jury lists. The lists in the several towns are supposed to contain the names of those of sound judgment, well informed, and of approved integrity. In some manner the names of many of the best qualified to serve fail to appear, or, if drawn, are not returned to court. If perchance a man of large business affairs is drawn, or even a foreman in his employ, the Court immediately is requested to excuse because of business inconvenience. Few business men ever think of so adjusting their affairs that once in three years they may discharge this important duty of citizenship, yet they are the first and loudest in their complaint against the jury system.

CLERK OF COURTS

The office of the clerk of courts is also of great importance

in promoting the efficiency of the courts. Upon his accuracy and fidelity may depend the rights and property of litigants. Frequent changes in this office does not work for efficiency. Experience here is an invaluable asset. The important records of our courts should not be subject to the vicissitudes of partisan or primary politics.

RECOMMENDATIONS

From this survey, a majority of the Committee join in making the following recommendations:

First: That the statute now preventing the jury from considering the fact that a respondent in a criminal case does not take the stand as evidence of his guilt should be repealed.

Second: That all criminal processes for offense below the grade of infamous crimes within the meaning of the Constitution be made subject to amendment in matters of substance as well as form, provided the nature of the charge is not thereby changed, and the rights of the accused in case of surprise are properly safeguarded.

Third: That a commission, appointed by the Court, be created in each county to make up jury lists of persons most fitted to perform jury duty in the several towns and when requested by the clerk of courts or the Justice presiding at any term of court held in the county to notify the requested number of jurymen to report at such terms for jury duty, dividing the number as near as may be among the several towns according to population. Increased compensation commensurate with the increase in expenses while on duty should also be considered.

Fourth: That the clerk of courts in the several counties at the expiration of the present term of those now in office be thereafter appointed by the Court for a term of four years, subject to removal by any Justice of the Court at any time for good cause shown.

Fifth: To lighten the burden on the trial courts and with a view to centering in one court all matters relating to guardians, the care and custody and support of children, divorce and annulment of marriage, that original and exclusive jurisdiction of the custody, care, and support of children and of wives where the husband refuses to support them without just cause—except in matters criminal in their nature—of divorce and annulment of marriage be vested in the Probate Courts with a right of appeal to the Superior Court next to be held in the county, to be heard *de novo* in the appellate court. The Committee further recommends that a constitutional amendment be proposed provided for the appointment of Probate Judges from members of the Bar by the Chief Executive as other judicial officers are appointed and qualified.

Sixth: That the jurisdiction of the municipal and district courts be made as near uniform as possible and the district system, already in operation in several counties, be extended until each county be divided into districts with a judge of ability to preside, with a view to abolishing conflicting jurisdictions of inferior courts, and to dispensing with a municipal court where a district court may properly include territory now divided between two or more municipal courts.

That the powers of trial justices located within the jurisdiction of any municipal or district court be limited to the issuing of warrants returnable to such courts, and in no instance shall they issue a warrant where one has been refused on the same state of facts by a judge of a municipal or district court having jurisdiction.

Seventh: To relieve the Supreme Judicial Court of a portion of the trial work, thus affording more time for equity and law work and for more frequent law terms, that the local Superior Courts be abolished and a Superior or Circuit Court of general jurisdiction be created to hold terms in the counties of Androscoggin, Aroostook, Cumberland, Kennebec, Penobscot, and York, and to have equal concurrent jurisdiction with the Supreme Judicial Court in all matters in law, including appeals from County Commissioners, municipal officers, and Boards of Assessors, and in the several counties above named exclusive jurisdiction in all probate appeals. The Supreme Judicial Court to retain exclusive jurisdiction in the issuing of writs of prohibition, *quo warranto,* writs of error and of *certiorari.*

The Superior or Circuit Court to consist of five judges appointed as provided in the Constitution.

The Supreme Judicial Court to hold no terms in either of the above named counties but to hold the jury terms in all the other counties as formerly.

Five terms of the Law Court to be held at stated intervals to afford more speedy disposition of law cases.

The records and all cases pending in the Supreme Judicial Court in the counties of Androscoggin, Aroostook, Cumberland, Kennebec, Penobscot and York to be transferred to the Superior or Circuit Court docket in the several counties, and there be heard and determined as though they thereafter originated in that court.

As the appellate work increases, it may become necessary to extend further the exclusive jurisdiction of the Superior or Circuit Court until it shall do all of the trial work and the Supreme Judicial Court shall do only appellate and equity work. The Committee do not, however, favor a separate appellate court at present.

Respectfully submitted,

SCOTT WILSON, *Chairman,*

For the Committee.