

REPORT OF JUDICIARY COMMISSION

JANUARY, 1924

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REPORT
OF
Judiciary Commission

JANUARY, 1924

KING BROS., INC.,
Printers,
208 N. Calvert St.,
Baltimore, Md.

REPORT

January 7, 1924.

*To the Honorable Albert C. Ritchie,
Governor of Maryland.*

Dear Sir:

A special committee appointed by the Bar Association of Baltimore City conferred with a similar committee of the Supreme Bench; and after making recommendations applicable solely to Baltimore City, reported as follows on December the third, 1921:

"Now, the above, as we have stated, are in the main emergency remedies; but we believe that the time has come for the re-organization of our whole judicial system. It is a well-known fact that our State is falling behind in the administration of justice. Our decisions have lost their uniformity and certainty. We believe that a committee of the ablest men in this State should be appointed by the Governor to study carefully our whole judicial system and methods for its improvement. This would include the advisability *vel non* of a State-wide Judiciary, a Municipal Court for Baltimore City and corresponding County Courts for the rest of the State, Courts of Conciliation, the expensive work of our Orphans' Courts, real salaries for our Judges, a State-wide Court of Appeals, methods of decisions in appellate courts, and all matters relating to the prompt and fair and uniform administration of justice.

(Signed) "GEORGE WEEMS WILLIAMS,

CHARLES F. HARLEY,

SAMUEL K. DENNIS,

Committee."

This report resulted in the passage of Joint Resolution No. 8 by the General Assembly of 1922:

JOINT RESOLUTION No. 8.

PROVIDING for the appointment by the Governor of Maryland, of a Commission to study carefully our whole judicial system and methods for its improvement, and report to the next General Assembly.

WHEREAS, The maintenance of the highest standards in the administration of justice is of the utmost importance to our State;

Now, therefore, be it

Resolved by the General Assembly of Maryland, That a Commission, to be known as the "Judiciary Commission," not exceeding twenty-one in number, be appointed by the Governor of Maryland, to serve without compensation, for the purpose of studying carefully, the whole judicial system of this State and methods for its improvement, and the Commission shall report the result of its labors to the General Assembly of 1924.

The Committee was duly appointed, and entered upon its work. After several meetings a sub-committee was selected by the Committee to give special study to the subject and report to the General Committee. This special Committee consisted of Charles McH. Howard, Chairman; F. Neal Parke, Philip B. Perlman, Walter H. Buck and Charles F. Harley. After careful study a report was agreed upon, Mr. F. Neal Parke regretting that he was unable to concur in all of the recommendations of said report. On December the

twenty-ninth, 1923, the Committee at large passed upon this report as follows:

For Approval—SYLVAN HAYES LAUCHHEIMER,

VERNON COOK,

JOHN M. REQUARDT,

J. CRAIG McLANAHAN,

CHARLES McH. HOWARD,

PHILIP B. PERLMAN,

WALTER H. BUCK,

CHARLES F. HARLEY,

Against Approval—F. NEAL PARKE,

THOMAS H. ROBINSON,

SAMUEL K. DENNIS,

JACOB ROHRBACK,

JOHN B. GRAY, SR.,

ALEXANDER ARMSTRONG.

The gentlemen dissenting agreed neither with those approving the report nor among themselves. Mr. Parke presented a separate plan. Mr. Gray thought five judges for the Court of Appeals enough and favored the limitation of the labors of this Court to appellate work; but disapproved other parts of the report, and approved some of the provisions of Mr. Parke's plan. Mr. Dennis approved of neither the present system nor that of the sub-committee nor the plan of Mr. Parke. He thought there ought to be fewer circuits with an appellate court without *nisi prius* work. Mr. Rohrback

declared in favor of the present system. Mr. Robinson was against any change except the addition to the Court of Appeals of one judge from Baltimore City. Mr. Armstrong made a motion (which was not seconded) that the report be amended so as to provide for seven judges instead of five in the Court of Appeals.

We enclose the report ~~and the plan of Mr. Parks~~ for transmission to the Legislature.

Your obedient servants,

VERNON COOK,

JOHN M. REQUARDT,

J. CRAIG McLANAHAN,

SYLVAN HAYES LAUCHHEIMER,

CHARLES McH. HOWARD,

PHILIP B. PERLMAN,

CHARLES F. HARLEY,

WALTER H. BUCK,

LETTER OF SUB-COMMITTEE ACCOMPANYING ITS REPORT.

The Special Committee submits its report herewith for the consideration of the Judiciary Commission.

The Judicial System in this State has remained practically unchanged since the Constitution of 1867. Meanwhile the State has grown very much, both in population and resources. For these reasons, and also because of the complication of modern commercial and industrial developments, the business of the Courts has increased both in volume and complexity. The Courts must be equipped to take care of these changed conditions.

First of all, there is no head to the Judicial System in this State, and no officer is charged with the duty of seeing whether the system is working properly or not. We think the Chief Judge of the Court of Appeals should be the head of the State's Judicial System, and have so provided in the plan. At the present time the Chief Judge of the Court of Appeals is merely the presiding Judge in that Court, with the right to sit below in the trial of cases only in that Circuit in which he is elected. We think the Chief Judge of the Court of Appeals should have the right to sit in any Court in this State. He should also be charged with the duty of reporting to the Governor or the General Assembly concerning the workings of the Judicial System in this State.

We recommend that the Court of Appeals be composed of five Judges, chosen from any part of the State and not by circuits, and we do not believe that the Appellate Judges should do Circuit Court work as such. We do believe, however, that the Chief Judge of the Court of Appeals should have the right to assign any of the Judges of the Court of Appeals to do trial work where such a course seems expedient.

He should also have the right under rules to be adopted by the Court of Appeals to assign Circuit Court Judges from one circuit to another to help out in the work there, and no such power exists anywhere at the present time.

This proposal as to the Court of Appeals is not a new one, except as to the number of the Judges. As far back as 1908 a Committee of the Maryland State Bar Association, composed of very able judges and lawyers, made a similar proposal. On that Committee were the late Judge Conway W. Sams, of Baltimore City; Judge John R. Pattison, now of the Court of Appeals, of Dorchester County; Judge James H. Covington, of Talbot County; William Grason, of Baltimore County; William C. Devecmon, of Allegany County; Ridgely P. Melvin, of Anne Arundel County; Senator Blair Lee, of Montgomery County; Charles H. Stanley, of Howard County; and Judge Alfred S. Niles, of Baltimore City. It is a difficult matter at best to find the proper material for membership on the Court of Appeals in any part of the State, and we should not add to the difficulties by requiring selections to be made from small districts. We think it of primary importance that the Judges of the Appellate Court confine themselves largely to appellate work, and we do not believe it to be wise for their attention to be diverted from this all-important work to local circuit duties which must oftentimes be trivial in their nature.

There are several reasons for suggesting an Appellate Court of five Judges. Investigation shows that some of the States find five Judges ample to handle their appellate work, and there should also be a tendency towards a greater certainty in the law with a small Court. The Supreme Court of Appeals in Virginia, which handles about 225 cases a year, has five Judges. The Supreme Judicial Court in Massachusetts has seven Judges, but one of those Judges is always en-

gaged in hearing special prerogative writ and special equity cases. With six Judges to handle the appellate work the Massachusetts Court handles from 325 to 400 cases per year; and Judge Loring, late of that Court, is authority for the statement that the Court can handle 490 cases. Our Court of Appeals has averaged for the last four years, reported and unreported cases, about 166 decided cases each year.

We believe that raising the jurisdiction of the Justices of the Peace, and the People's Court Justices as we propose, will tend to decrease the business in the Court of Appeals, and we think that five Judges would be ample to dispose of the work in that Court.

We think that the Chief Judge of the Supreme Bench in Baltimore should be charged with the duty of assigning the Judges of that Court to the respective Courts in that City, and that these assignments should be permanent in their nature.

With the great volume of business in the Baltimore Courts it is an unsatisfactory plan to have an annual or periodical reassignment of Judges. Under such conditions, it is difficult for the most competent Judge who is constantly changed from law to equity or to criminal work, to do his best work.

We also think the Supreme Bench should have the right to create divisions in any of the Courts and to assign particular classes of work to such divisions. As an illustration, we think that in a large commercial and industrial city like Baltimore, there should be a commercial Court to handle commercial cases, to which should be assigned a Judge or Judges, known to be especially equipped to handle such work.

We recommend that the Court of Appeals be given the power to make the rules of pleading, practice and procedure in law courts as well as in equity courts under proper supervision by the General Assembly. Having this power the Court will be charged with the duty of seeing that such rules are put on a workable basis; and experience shows that the Courts will perform this duty properly.

Respectfully submitted,

CHARLES McH. HOWARD,

WALTER H. BUCK,

PHILIP B. PERLMAN,

CHARLES F. HARLEY.

I regret that I am unable to concur in all of the recommendations of the foregoing report.

F. NEAL PARKE.

**REPORT OF THE SPECIAL COMMITTEE OF THE
JUDICIARY COMMISSION APPOINTED PUR-
SUANT TO RESOLUTION PASSED
MAY 28th, 1923.**

The Committee recommends:

THE COURT OF APPEALS.

The Court of Appeals shall have the same jurisdiction and powers of the present Court of Appeals. It shall consist of a Chief Judge and four Associate Judges. The Judges of the Court of Appeals shall, in the first instance, be appointed by the Governor, and may be chosen from any part of the State, without regard to residence. The Governor shall designate which one of the five members of said Court shall be the Chief Judge.

Any person appointed by the Governor to the Court of Appeals shall hold office until the first succeeding general State election. The name of the person holding office by appointment shall be certified by the Secretary of State to the Board of Supervisors of Elections of the counties and of Baltimore City, and shall be placed by them upon the ballots used in said election, in the same manner as if such person had been nominated for such office by a political party. Other candidates for the office of Judge of the Court of Appeals may be nominated by a petition filed with the Secretary of State. The petition shall contain the signatures of at least 5,000 qualified voters. The General Assembly shall have power to limit the time within which, and to prescribe the conditions under which such petitions may be filed. No candidate for Judge of the Court of Appeals shall be nominated by or represent any political party, and no party or other designation shall appear on the ballot after the name of any candidate for such office. The names of all candidates for Judge of the Court of Appeals shall be grouped upon a sepa-

rate part of the ballot from the names of the nominees of political parties for other offices. The candidates for Judge of the Court of Appeals receiving the greatest number of votes shall be declared to be elected for a term of 15 years from such election.

In the event that no person is nominated by petition, it shall not be necessary for the Secretary of State to certify to the Boards of Supervisors of Election the name of the person holding office under appointment, but such person shall be entitled to receive a commission from the Governor for a term of 15 years from the day of such election, in the same manner as if he had been duly elected.

Should the person holding office under appointment resign or die before election day, or decline to become a candidate, the Governor shall have power, and it shall be his duty, to fill the vacancy immediately or, in the case where the appointee declines to become a candidate for the regular term, to designate some other person whose name shall be placed upon the ballot in substitution for the name of the appointee. In the event that no person is nominated by petition, the person so designated by the Governor shall be entitled to a commission to hold the office of the Judge of the Court of Appeals for the regular term of 15 years.

The eight Judges of the Court of Appeals who hold office at the time these provisions become effective shall continue as Judges of the Court of Appeals, but shall have no Circuit Court duty as such to perform, and said persons shall continue in office until the expiration of the terms for which they have been respectively chosen. The provisions relating to the number and the manner of selecting the Judges of the Court of Appeals shall not go into effect until January 1, 1927. From and after that date no vacancies in said Court, caused by death, resignation, or in any other manner, shall be filled until said Court shall have less than five members.

POWERS OF THE COURT OF APPEALS.

The Chief Judge of the Court of Appeals shall have power to assign any one or more of the Judges of the Court of Appeals to duty in any of the circuits of this State, pursuant to regulations to be adopted by the Court of Appeals, and said Chief Judge shall by virtue of his office, have power to sit in any Court in any of the Circuits of this State. The Chief Judge of the Court of Appeals shall also have power pursuant to regulations adopted as aforesaid, to assign any ~~or more of the Judges in any of the Circuits of this State to~~ one or more of the Judges in any of the Circuits of this State to duty in any other Circuit of this State.

The Court of Appeals shall have power to make, alter, abolish and amend all laws and rules: (a) for regulating the terms, sittings and vacations of the Court of Appeals, the Circuit Courts for the various Circuits of this State, and the Common Law and Equity Courts of Baltimore City; and also for regulating the pleading, practice and procedure therein; (b) for regulating the methods of keeping the dockets, effects and conducting the business of all of the Clerks of the Court, and Registers of Wills and Sheriffs in this State, including the dockets, effects and business of any of the Justices of the Peace in this State or any Courts or offices which may take over the duty of handling said dockets for said Justices or for such Courts as may take the place thereof, provided, however, that the General Assembly, by a special law limited to such purpose may alter, abolish and amend any such rules as prescribed by the Court of Appeals, and may from time to time, prescribe and limit, by such special law or laws the powers of said Court of Appeals as set out in subdivisions (a) and (b) hereof. The Judges in the various circuits of this State, including the Judges of the Supreme Bench in the Eighth Circuit shall also have the same powers and duties with respect to the business of their respective Circuits as are given

to the Court of Appeals, provided, however, that the said Judges in the various Circuits and in Baltimore City shall not exercise any of said power without the approval of the Court of Appeals, and it shall be the duty of the Clerk of the Court of Appeals to keep an official record of any rules or regulations made by the Court of Appeals or the Courts in any of the Circuits of this State.

The Court of Appeals shall also have full power and authority to provide for admissions to the Bar of this State, ~~and the disciplining and removing of the members thereof,~~ and shall provide rules therefor to be observed by the Courts in all the Circuits of this State.

It shall be the duty of the Chief Judge of the Court of Appeals to make an annual report to the Governor of the State concerning the workings of the judicial system in Maryland and said Chief Judge shall have power to require the Attorney General, and the State's Attorneys for the various counties, the Clerks of the Courts, the Registers of Wills, the Sheriffs and other public officers to furnish him with the information necessary or convenient for the purposes of such report.

THE CIRCUIT COURTS OF THE COUNTIES AND THE SUPREME BENCH OF BALTIMORE CITY.

The eight Judicial Circuits of this State shall be continued as at present, and the Associate Judges therein shall continue in office until the expiration of the terms for which they were respectively elected. In each of the first seven of the said Circuits, there shall be a Chief Judge and two Associate Judges, chosen as at present, but the Chief Judges of said Circuits shall not be members of the Court of Appeals. If the changes suggested herein are adopted, the Governor shall designate one of the Associate Judges in each of the first seven of said Circuits as Chief Judge for such Circuits and

at the succeeding general State election an Associate Judge in each of the first seven of said Circuits shall be elected in the manner now provided by the Constitution, except in the Third Circuit where there are at present three Associate Judges.

In the Eighth Circuit, there shall be a Chief Judge and ten Associate Judges of the Supreme Bench of Baltimore City. Said Judges shall be chosen as at present, and the persons in office at the time these provisions take effect shall continue therein until the expiration of the terms for which they were respectively elected.

The Judges of the Supreme Bench of Baltimore City may, from time to time, make such divisions of the Common Law and Equity Courts in Baltimore as they may think proper, either for the prevention of delays, or for the purpose of assigning particular classes of cases or business to any of such divisions.

It shall be the duty of the Chief Judge of the Supreme Bench of Baltimore City to assign the several members of the Supreme Bench to the Common Law Courts and Equity Courts, or any particular division thereof. Such assignments shall be permanent, but said Chief Judge shall have power, from time to time, to change such assignments either permanently or temporarily, in cases of emergency or because of the excess of business in any of said divisions, or because the change of any such assignment is expedient for the better administration of justice.

COMPENSATION OF JUDGES.

The salaries of the Judges of the Court of Appeals and of the Associate Judges in the first seven Circuits of this State and of the Judges of the Supreme Bench of Baltimore

City, shall be the same as are now provided. The salaries of the Chief Judge for the first seven Circuits shall be the same as are now being paid to the Associate Judges of the said Circuits. The General Assembly shall have power, from time to time, to increase the salaries of any of the Judges in this State.

The Mayor and City Council of Baltimore shall have authority to pay to each of the Judges of the Supreme Bench an annual addition to their respective salaries; provided that the same being once granted shall not be diminished during the continuance of said Judges in office. Any of the counties in the first seven Circuits shall have authority to pay the Chief Judge and Associate Judges of the Circuit an annual addition to their respective salaries, and all of the counties embraced in any one of the first seven Circuits, may, by agreement, provide for an annual addition to the salaries of the Chief Judge and Associate Judges, and for determining the share of such additional salary which each county will contribute: provided that an additional salary being once granted shall not be diminished during the continuance of said Judges in office.

POWER OF THE GENERAL ASSEMBLY TO CHANGE JURISDICTION OF COURTS IN THE EIGHT CIRCUITS.

The General Assembly shall have power to re-apportion, change, enlarge or diminish the jurisdiction of any of the Courts in any of the eight Circuits in the State, and to abolish any of the said Courts and to add the powers and duties of said Courts, and of any of the officers thereof, to any other Court or Courts now in existence or hereafter to be created by said General Assembly. The General Assembly shall also have power to restrict the right of removal in civil cases,

so that any of such cases may only be removed to any other Court or division thereof, in the same Circuit in which said case arose. Such powers in the General Assembly shall also extend to the Orphans' Courts and the officers thereof in the several counties in this State and in Baltimore City.

The General Assembly shall have power to add additional Judgeships in any of the eight Circuits, and also the power to abolish any one or more Judgeships in any of the said Circuits, but such power shall not be used so as to reduce the term for which any Judge has been elected.

CIVIL JURISDICTION OF JUSTICES OF THE PEACE.

The civil jurisdiction of the Justices of the Peace in the several counties of this State and of the Justices of the Peace in Baltimore City shall be increased to \$500.00. Appeals from judgments of Justices of the Peace in civil cases shall be allowed as now provided. Any of the Circuit Judges of the counties or of the Supreme Bench of Baltimore City shall have power, in cases of extraordinary interest or importance arising on appeal from a Justice of the Peace to grant, upon proper application, a certificate of reasonable doubt upon which an appeal may be taken to the Court of Appeals. The General Assembly shall have power to determine the class of cases in which such certificates may be allowed.

CREATION OF INFERIOR COURTS.

The General Assembly shall have power to prescribe the number of the Justices of the Peace and Constables in the several counties, and in Baltimore City, and to abolish such offices in any one or more of said counties, and in Baltimore City, or in any subdivision of a county or in any municipal corporation located in a county.

The General Assembly may establish county, municipal or other Courts in the place of said Justices of the Peace, and provide for the appointment of the Judges of such Courts, the Constables, Clerks and such other assistants as may be necessary properly to conduct the business of such Courts. The General Assembly may also transfer the jurisdiction and powers of Justices of the Peace to any Courts now existing or hereafter established.

CHARLES McH. HOWARD,

WALTER H. BUCK,

PHILIP B. PERLMAN,

CHARLES F. HARLEY.

I regret that I am unable to concur in all of the recommendations of the foregoing report.

F. NEAL PARKE.

CASES DECIDED BY COURT OF APPEALS.

| | 1919. | 1920. | 1921. | 1922 |
|-----------------------|-------|-------|-------|------|
| Baltimore City | 108 | 80 | 124 | 102 |
| Counties: | | | | |
| Allegany | 1 | 3 | 5 | 8 |
| Anne Arundel | 8 | 2 | 2 | 5 |
| Baltimore | 9 | 5 | 12 | 10 |
| Calvert | 2 | .. | .. | .. |
| Caroline | 3 | .. | 2 | 1 |
| Carroll | 4 | 3 | 2 | 5 |
| Cecil | 2 | .. | 1 | 4 |
| Charles | .. | .. | 1 | .. |
| Dorchester | 1 | 2 | 2 | 2 |
| Frederick | 3 | 9 | 6 | 2 |
| Garrett | 1 | .. | 1 | .. |
| Harford | 3 | 7 | 3 | 5 |
| Howard | 2 | 2 | 5 | 6 |
| Kent | .. | .. | .. | .. |
| Montgomery | 5 | 2 | 7 | 3 |
| Prince George's | 3 | 3 | 2 | 3 |
| Queen Anne's | .. | 1 | 3 | 2 |
| St. Mary's | 1 | 2 | .. | .. |
| Somerset | 1 | 1 | 2 | 1 |
| Talbot | 1 | .. | 2 | .. |
| Washington | 5 | 3 | 5 | 12 |
| Wicomico | 3 | 2 | 7 | 2 |
| Worcester | 2 | .. | 2 | 3 |
| Total..... | 168 | 127 | 196 | 176 |

Baltimore Sun
Jan. 7, 1924

A SOUND PLAN TO REORGANIZE THE JUDICIARY.

If the present Legislature does little else at this session except adopt the plan submitted by the Judiciary Commission to lift the Court of Appeals out of the mire of primary political and strike from it the shackles of circuit selection, it will have served the State well.

It is notoriously difficult to get lawyers to agree, and the commission is, unfortunately, not an unit in its recommendations. Yet the basic proposals seem to THE SUN so sound and sane, so calmly reasoned and so badly needed

that it is difficult to see what reasons other than political ones, or personal ones, or sectional ones, can be given for opposition. Undoubtedly, the gentlemen who disapprove the report are just as sincere and well meaning as those who favor it, but it does seem to THE SUN that they could not have looked at the thing in a really broad and enlightened way.

This opinion seems to be confirmed by their inability to agree among themselves on a minority report and the further fact that one of the dissenters was a member of the special committee of the Bar Association which three years ago declared for a State-wide Court of Appeals, pointed out that Maryland was falling far behind in the administration of justice and that the time had come for a reorganization of the whole judicial system—which are exactly the things the present plan proposes to do.

The plain fact is that every intelligent, unbiased lawyer—to say nothing of laymen of that type—knows there is something wrong with our judiciary system, that it does not function as it should and that it ought not to be quite so hard to get good men to serve as it now is. Two of the things that have helped bring about these conditions are, first, the necessity for a judicial candidate to seek his nomination in a party primary, and, second, the restriction to narrow judicial circuits in the selection of Court of Appeals candidates.

The commission proposes a perfectly simple, non-revolutionary and workable plan to correct both these things—and proposes it in a way free from any real objection so far as we can see.

It would certainly be a gratifying and heartening thing to have the Governor, who is a lawyer, and the members of the bar and the bench throughout the State, regardless of politics, get behind such a proposition as this and put it over, instead of having the squabbling, side stepping and buck passing which always in the past has prevented the lawyers from achieving the professional reforms to which they so solemnly pledge themselves in the high-sounding resolutions of their annual meetings.