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NOTES AND COMMENTS

The LAW REVIEW is pleased to publish the three addresses which were delivered before an open meeting of the Wake County Bar Association in the City of Raleigh on June 1, 1925. Credit for the success of this meeting is largely due to Mr. James H. Pou, the President of the Wake County Bar Association. The addresses form a series dealing with the duties of the lawyer (1) as a citizen, (2) to his client and adversary and (3) as an officer of the court. The speakers were Judge Frank A. Daniels of the Superior Court, Chief Justice Walter Parker Stacy of the Supreme Court, and Judge Isaac M. Meekins of the United States District Court. These addresses deal with subjects of the greatest importance to the members of the North Carolina Bar, especially to those younger men who should take heed as they begin the practice of their chosen profession.

Judge Daniel's address appeared in the December issue, Judge Stacy's address appears in this issue and Judge Meekins' address will appear in the next issue.

THE JUDICIAL CONFERENCE

That there is much room for improvement in our present system of administering justice, criminal or civil, and particularly in the procedure and practice of our courts, is a conclusion to which any reasonable person is forced, who gives it a thought. The delays and technicalities of our court procedure are everywhere apparent, until there is growing up a tendency on the part of business men to ignore the law altogether and to settle their own disputes in a business-like way.[1] Whenever we mention reform in procedure, the example of England comes to mind. In the December issue of the American Bar Association Journal, there is an article by Professor Edson R. Sunderland entitled "An Appraisal of English Procedure." Recently, the Greensboro *Daily News,* on four successive days, carried an editorial account of this excellent article with some timely comments. Every lawyer in North Carolina should read the article, unless he is that citizen who is not interested in fitting our legal machinery to the work which society requires of it. It is clear that the English have succeeded in developing a procedure and practice that is greatly superior to ours; in the words of the editorial in the Greensboro *Daily News.* "Nevertheless the fact stands that out of a cumbersome, expensive, highly involved and mechanically lumbering mechanism the English have developed a machine that in simplicity and direct aim is able to perform the functions of justice in a manner far superior to anything we have in this country."

A step forward toward a better administration of law was taken in this State by the establishment of a judicial council. North Carolina is the fourth state to have adopted the judicial council idea, being preceded only by Ohio, Oregon and Massachusetts. In 1925, the General Assembly passed an act to create a judicial conference,[2] the purpose expressed in the statute being "for the continuous study of the organization, rules and methods of practice and procedure of the judicial system of the State and the practical working and results produced by the system." The conference is composed of the entire judiciary of the State, i.e., the Supreme Court justices and the Superior Court judges, the Attorney General and one practising attorney

[1] The most significant phase of this is Commercial Arbitration. See *Commercial Arbitration or Court Application of Common Law Rules of Marketing* by Wesley A. Sturges in 34 Yale Law Journal 480, reprinted in the October, 1925, number of the Journal of the American Judicature Society, which number contains several other discussions of Commercial Arbitration.

[2] Public Laws of North Carolina, 1925, chapter 244, mentioned in 3 N. C. Law Review 132.

from each judicial district, to be appointed by the Governor for a term of two years. While this body of fifty men is much too large for effective administration, yet the two meetings each year of this large group will do much to bring the bench and the bar of the State together and tend to uniformity in practice.

At the first meeting of the Judicial Conference, it was divided into six sections or committees, as follows:

1. Committee on Judicial System;
2. Committee on Process and Pleadings;
3. Committee on Juries;
4. Committee on Trials;
5. Committee on Appeals;
6. Committee on Rules of Practice in Superior and Supreme Courts.

The chairman of the six committees with the President of the Conference, who is the Chief Justice, as Chairman ex-officio, constitute the permanent executive committee, thus providing a continuous administrative authority, which will be necessary when the recording of information is begun.

The North Carolina statute provides that the Conference shall report annually to the Governor the work of the various parts and branches of the judicial system, with its recommendations as to any changes or reforms in the system and in the practice and procedure of the courts. The Governor is to transmit the reports of the Judicial Conference to the General Assembly with such recommendations as he may deem advisable. The Conference may also submit suggestions and recommendations to the judges of the various courts with relation to rules of practice and procedure. To enable the Conference to get necessary information, it has power to require the attendance of witnesses and the production of books and papers, and the clerks of the various courts and other officials shall make to the Conference such reports as the Conference may prescribe.

At the second meeting of the Conference in December, the various committees filed reports, but as was emphasized, these reports are merely suggestive. No action was taken by the Conference. Some of the suggestions follow:

1. Committee on Judicial System: recommended that a handbook on Procedure be prepared and published, that the clerks of the Superior Courts render semi-annual reports showing the condition of the civil and criminal dockets and the disposition of cases, that the number and time of arguments be limited; suggested further, but

without prejudice, that the Supreme Court be relieved of the multiplicity of appeals by limiting the right of appeal in certain cases, that the rotation of judges be abolished, that the equity jurisdiction of the Superior Court judges be restored to the end that complicated cases may be disposed of without a jury and that trial by jury be limited to actions at law.

2. Committee on Process and Pleadings: submitted a proposed form of judgment in claim and delivery actions and also several proposed amendments of the Consolidated Statutes relative to issuing summons and filing complaints and answers.

3. Committee on Juries: suggested certain improvements in the present method of drawing and selecting juries.

4. Committee on Trials: favored the continuation of the present method of having the judge recapitulate the evidence in charging the jury, favored some change toward giving judges power to limit arguments of counsel to juries; disapproved the creation of a commission of three physicians who would be subject to call in criminal cases where insanity is a defense.

5. Committee on Appeals: suggested that all statements of case on appeal be submitted to the trial court and that original exhibits should be certified to the Supreme Court without being obliged to incur the expense of printing exhibits in the brief.

6. Committee on Rules of Practice: made several suggestions relative to fixing the calendar of cases for trial.

What the Judicial Conference will actually recommend to the Governor and so to the General Assembly will not be decided until subsequent meetings. The main thing is that the Conference is at work, and we may look forward to some tangible evidence of their labors by the next meeting of the General Assembly. At that time it is hoped that the Judicial Conference will be continued as a permanent institution with an increased appropriation to cover traveling expenses of members and to provide for the expense incident to the compilation of data concerning the criminal and civil dockets and the administration of justice in North Carolina.

Some of the advantages of a judicial council have recently been enumerated as follows:[3]

"1. Through the judicial council there is provided, for the continuous, thorough, scientific study of defects in procedure and pro-

[3] See *The Growth of the Judicial Council Movement* by Judge Charles H. Paul, 10 Minn. Law Review 85, 97-8.

posals to remedy those defects, a small, compact, yet representative body whose conclusions, by reason of the personnel of the council and the manner of investigation will carry weight with lawyers, the legislature and the people. It differs from a code commission in that it is a permanent body which can hold public hearings from time to time, and provides a medium for flexible action which could not be secured through a code commission or any body which would make a special recommendation and then be discharged from further action. Furthermore, it is unlike a code commission in that no compensation is allowed to the members of the council, the only appropriation being for the necessary traveling and clerical expenses of the members.

"2. If the council is composed of a cross-cut of judges and lawyers, a breadth of view will be obtained which, unfortunately, has been lacking in many previous attempts at judicial reform. Through its operation the judges will become active in measures for improvement of our legal procedure and if the judicial council functions properly the public as well as the judges and the lawyers will coöperate in the solution of our procedural problems.

"3. The official character of the judicial council should replace inactivity with action and initiative and, more than that, responsibility. Due also to its official character, leading members of the bar feel appointment on the judicial council desirable, and their appointment naturally gives weight to the council's findings.

"4. The council tends to prevent ill-advised, radical and undigested reforms and piecemeal, spasmodic or ill-advised proposals which have too often been presented, and sometimes adopted, by the legislature. In the place of unscientific action, or no action at all, the judicial council proposes to act upon full information and to secure action from the legislature or from the judges on needed reforms of sound character."

The remarks of Chief Justice Stacy, made on opening the Judicial Conference in the Supreme Court Room in Raleigh on June 25, 1925, are significant and show the spirit in which the work of the Conference must be carried on. Judge Stacy spoke as follows:

"Gentlemen of the Conference:

"This body of men, composed of the Justice of the Supreme Court, the Judges of the Superior Courts, the Attorney-General and one practicing attorney from each of the twenty judicial districts of

the State, has been called together, under authority of an act of the Legislature, charging us with the duty of studying the organization, rules and methods of practice and procedure of the judicial system of the State of North Carolina; and it is the expressed desire of the Legislative Department that we recommend such changes and reforms in the system and in the practice and procedure of the courts as in our judgment may be needful and proper.

"The reason for the establishment of such a conference is obvious. Ours is a government of laws and not of men. In this country, the law is supreme and it must be obeyed. Rights created by law can legally be enforced only by an appeal to the law, and for every right there must be, not only a remedy, but an adequate remedy, or for every wrong there must be a complete redress.

"Under such a polity, the courts are necessarily charged with the task of adjudicating the rights of litigants, of judging and expounding the Constitution and the laws which have been, or may be, made in pursuance thereof; and it is essential that this should be done speedily, or at least, not so tardily as to render just judgments unjust. The establishment of justice is the end of all government. In short, it is the end of all civil society. It has ever been and ever will be pursued by men until it is attained, or until liberty is lost in the pursuit. Our present task is a part of that pursuit. And the judiciary is peculiarly interested in the quest for truth.

"But with the detailed machinery of the courts, controlled almost exclusively by the legislative branch of the government, the trial judges have often found themselves bound by inflexible and, more or less, unrelated statutes, enacted by piecemeal, and which sometimes make for delay, amounting in many instances to a denial of justice, rather than for reasonable dispatch of business. As a result, the courts have been charged with incompetency and the lawyers with indifference, if not insincerity, regarding a condition which they did not wholly create and which, up to the present, they have been unable to alter. Appreciating the fact that, if the bench and bar are to be held responsible for the results of court procedure, as they are in the lay mind, they should be allowed to suggest at least the necessary remedies to cure the defects, the Legislature has provided for this conference, and its coöperation and assistance are not only invited, but they are earnestly desired. What is wanted is not impatient criticism, of which much has been given in the past, but competent advice. The Legislature is seeking to better and to render more efficient the administration of justice in the State.

"The real strength and power of the courts must rest ultimately upon the faith and confidence of the people. The three departments of government in this country draw their life-blood from the same source. They are separate and distinct, it is true, yet each serves as a check and auxiliary to the others. They are servants of a common master, working in a common business, striving for a common end. I think it may be safely said in this learned presence that no institution, ever yet devised, can sustain its authority over a free and thoughtful people unless it merit their respect and confidence. Hampered as we may be by the restrictions of certain statutes which at times seem to tangle justice in the net of form, still the responsibility is ours to merit and retain the respect of the people at large. No man can measure the debt of the country to its courts. On the other hand, who dares to measure the obligation and duty of the bench and bar to a patient and patriotic people in seeing to it that their faith and confidence are justified and sustained? This is not a duty which we owe to ourselves so much as it is a debt which the bench and bar owe to the State and Nation, over and above the obligations of citizenship, by virtue of their high calling, and by reason of their opportunity to look 'beyond the vision of battling races and an impoverished earth and catch a dreaming glimpse of peace,' to borrow an expressive phrase from Mr. Justice Holmes. Faith, respect and confidence constitute the trinity upon which the enduring strength of the courts must be planted and sustained.

"It is the work of the trial courts to settle litigation; it is the task of the appellate court to settle the law; it is the business of all to move with reasonable dispatch, that justice may not be denied by delay. And may I pause to make this pertinent observation about the administration of the courts: When parties resort to the judiciary for the settlement of their disputes, they are invoking a public agency, and they should not forget that rules of procedure are necessary, and must be observed, in order that the courts may properly discharges their duties. And while the adjective law is not to be enforced harshly or oppressively, but rather in a spirit of liberality, to the end that justice may be administered in all cases, yet this does not mean that the courts should apply the rules of practice in such a manner as to favor the negligent and at the same time penalize the diligent party."

R. H. W.