Open Court

North Carolina Law Review

OPEN COURT

THE SELECTION OF JUDGES*

A committee of the Cleveland Bar Association has just made a report which should stimulate thoughtful consideration of the problem by all members of the legal profession throughout the country. The body of that report is as follows:

"A majority of the Committee are of the opinion that it is their duty to recommend that system for the selection of judges in Ohio which they believe to be the best, without regard to the question as to whether or not it would be possible at this time to secure its adoption by the necessary changes in the Constitution and statutes of Ohio.

"After studying the problems involved, a majority of the Committee are of the opinion that practically all the judges of the Ohio courts should be appointed and not elected, and that whatever changes in the law may be necessary to bring this about should be made.

"This recommendation involves the duty of formulating and recommending the particular method of selecting judges, which, in the judgment of the Committee, is most likely to secure the best appointments for the respective courts.

"A majority of the Committee accordingly submits to the Executive Committee the opinion that:

"1. The judges of the courts of Ohio should be appointed and not selected by popular vote, except as noted below.

"2. A plan for the selection of judges, substantially as follows, should be adopted:

"(a) The election of the Chief Justice of the Supreme Court by popular vote;

"(b) The appointment of associate judges of the Supreme Court by the Governor, with the approval of two-thirds of the members of the senate, or the approval of a Judicial Council selected by the Senate;

"(c) The appointment of judges of the appellate courts by the Chief Justice of the Supreme Court with the approval of a majority of the associate judges of the Supreme Court;

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* Reprinted with permission of the Illinois Law Review. See 21 Illinois Law Rev. 612 (February, 1927).

"(d) The appointment of judges of all other courts by the Chief Justice of the Supreme Court, with the approval of the majority of the judges of the appellate courts for the respective districts within which the appointees are to serve;

"(e) Every judicial appointment to be for a term of six or eight years."[1]

It is encouraging to find that lawyers, proverbially conservative and generally satisfied with whatever legal institutions they have grown familiar with, are coming to realize that the failure of our courts to function satisfactorily is largely due to the incapacity of the judges; that the universal primary and popular election have failed to produce judges with adequate professional training and sufficient executive ability to deal with the increasing flood of litigation; and that mere tinkering with the election machinery is not apt to produce substantial improvement. The voter cannot vote intelligently in the judicial primary because he cannot have personal knowledge of the fitness of the candidates. He must either choose blindly, or follow with equal blindness the advice of some self-constituted body of advisers.

In some of the older states where judges have always been appointed by the governor, and where the policy has long been established of appointing judges on the basis of fitness rather than political expediency, there can be no doubt that the result has been far better than under popular election. Where no such tradition prevails, judicial appointments by the governor to fill vacancies have frequently turned out to be quite as unsatisfactory as judges swept into office by a popular landslide. The proposal to place the appointive power in the hands of an elected chief justice offers a plan which might reasonably be expected to reduce the political factors to a minimum in the selection of judges, and to hold out some assurance that the selection would be based on merit and fitness.

E. W. HINTON

COMPROMISE AND WORKMEN'S COMPENSATION

The following extract is from the opinion of the Virginia Supreme Court of Appeals in the case of *Humphries v. Boxley Bros. Co.* (1926) 135 S. E. 890, 891:

[1] The full majority and minority reports have been printed in the Cleveland *Daily Legal News and Recorder*. Copies may be secured through the Cleveland Bar Ass'n., 348 New Court House, Cleveland, Ohio.

"In 1918 the Workmen's Compensation Act was passed, which, by express terms, included minors among the employees entitled to its benefits. It is said to be in the nature of a compromise between employer and employee to settle their differences arising out of personal injuries, but it is a compromise greatly to the advantage of the employee. By it the question of the negligence of the employer is eliminated, the common-law doctrines of the assumption of risk, fellow servants, and contributory negligence are abolished, and the rules of evidence are laxly enforced—so laxly that an award may be made on hearsay evidence alone, if credible, and not contradicted. The relief afforded is fixed, certain, and speedy, and at a time when most needed. Under it there is no doubt or uncertainty as to the right of recovery or the amount thereof. The damage resulting from an accident is treated as a part of the expense of the business and to be borne as such, as much as the expense of repairing a piece of machinery which has broken down.

"In speaking of the compromise nature of such acts, it is said in *Stertz v. Industrial Ins. Commission,* 91 Wash. 588, 158 P. 256, Ann. Cas. 1918B, 354:

" 'Both had suffered under the old system, the employers by heavy judgments of which half was opposing lawyer's booty, the workmen through the old defenses or exhaustion in wasteful litigation. Both wanted peace. The master in exchange for limited liability was willing to pay on some claims in future where in the past there had been no liability at all. The servant was willing not only to give up trial by jury but to accept far less than he had often won in court, provided he was sure to get the small sum without having to fight for it. All agreed that the blood of the workman was the cost of production, that the industry should bear the charge. * * To win only after litigation, to collect only after the employment of lawyers, to receive the sum only after months or years of delay, was to the comparatively indigent claimant little better than to get nothing. The workmen wanted a system entirely new. It is but fair to admit that they had become impatient with the courts of law. They knew, and both economists and progressive jurists were pointing out, what is now generally conceded, that two generations ought never to have suffered from the baleful judgments of Abinger and Shaw.' "