

IMPROVEMENTS IN APPELLATE PROCEDURE WITHIN THE CONSTITUTION

That improvements are needed admits of no doubt. Our court of last resort is so constituted that most of its members have too many duties other than the work in the Court of Errors and Appeals. An arrangement which was admirable in 1844 and worked well thereafter has for years been outworn. The presiding officer of the court, the Chancellor, has withdrawn from practically all but administrative work in the Court of Chancery and Prerogative Court. The Justices of the Supreme Court have withdrawn from all trial work except a vestigial remnant in homicide cases, but their remaining work as Justices of the Supreme Court is heavy and highly important. The Judges specially appointed are also members of the Court of Pardons.

A fully satisfactory court of last resort cannot be constituted without amending the state Constitution. Experience has come pretty close to demonstrating that this cannot be done, so far as the courts are concerned. In 1903 and 1909 judiciary amendments were voted down at the polls. Since then, in spite of strenuous efforts, it has been impossible to get judiciary amendments through the Legislature. Amendments were introduced in the 1939 Legislature, but never passed even one House. Very probably similar amendments will be introduced in the present Legislature, and an effort will be made to have them adopted. Time alone will tell whether that can be done, and in any event the proposed amendments must of course pass, not only the present Legislature, but the next, and then be voted upon by the people before becoming effective. There is every reason therefore to question whether the next effort will be any more successful than those that have gone before. Must we continue to endure present conditions, or is there something that can be done within the Constitution that will give substantial relief? My contention is that there is. In this connection it is noteworthy that the State Bar Association at its mid-winter meeting authorized the appointment of a committee to consider not only judiciary amendments to the State Constitution, but also improvements within the Constitution.

My suggestion is to limit the appeals (in the widest sense) which

go to the Court of Errors and Appeals as of right, and at the same time provide satisfactory tribunals inferior to the Court of Errors and Appeals for the final hearing of such appeals as do not go to the court of last resort. The plan can be concretely expressed in statutes inserted in an appropriate place or places in the Revised Statutes of 1937. The most important and absolutely essential to the plan is the following, which we may call Act. #1:—

“Be it Enacted, etc.

“1: No judgment of the Supreme Court entered in a cause not originating in that court, no judgment of a Circuit Court, nor any order or decree of the Prerogative Court made in a cause not originating in that court, shall be reviewed by the Court of Errors and Appeals, either by writ of error or appeal, without leave of that court first had and obtained.

“2: Such leave to appeal may be given by general rules promulgated by the Court of Errors and Appeals or by special leave granted on motion in the particular case. Until such rules shall be made the rules hereto annexed in Schedule A shall be deemed to be the rules of the Court of Errors and Appeals, subject to suspension and amendment in any part thereof by the court, as experience will show to be expedient.

Schedule A.

RULES.

1. Leave to appeal to the Court of Errors and Appeals from judgments of the Supreme Court is granted in the following cases:
 - a. Cases in which the constitutionality of any Act of Congress or of Legislature of this state is involved.
 - b. Cases involving title to a public office.
 - c. Transfer inheritance tax cases.
 - d. Cases on certiorari, except certioraris to inferior courts.
2. Leave to appeal to the Court of Errors and Appeals from orders or decrees of the Prerogative Court is granted in the following cases:
 - a. Cases in which the constitutionality of any Act of Congress or of Legislature of this state is involved.
 - b. Cases in which the jurisdiction of the Prerogative Court, of an Orphans Court, or of a Surrogate is involved.”

Two questions at once present themselves:— Is the reform desirable, and is it constitutional?

That the reform is desirable will admit of little doubt. It will do what has not yet been attempted to be done, namely, diminish the labors of the Judges of the Court of Errors and Appeals as such. There will be eliminated from the *compulsory jurisdiction* of the Court of Errors and Appeals all cases commenced in the Circuit Courts, in the Courts of Common Pleas, all criminal cases other than capital cases, all District Court appeals, all certioraris to Recorders Courts, Justices of the Peace, and similar inferior tribunals. It will therefore leave the members of the Court of Errors and Appeals more time to devote to the causes which they do consider.

Litigants have a right to a fair trial and to a full and adequate consideration by one Appellate Court. Further than that it is submitted their rights do not go. The court of last resort should exist to consider questions of law (in the widest sense and therefore including equity) and to decide cases of outstanding importance to the community in general, as distinguished from the litigants themselves. The proposed plan gives, in law and probate cases at least, the right to sift out the grist coming to it, and select for its consideration only cases worthy of consideration by that high tribunal. The proposed Act does not affect the jurisdiction of the Court of Errors and Appeals in criminal cases punishable by death, because such cases go direct by writ of error to the Oyer and Terminer. It permits the court by general rules to select classes of cases which it deems obviously of sufficient importance to require its consideration, and reserves the right to make a preliminary investigation of any case, and if it finds that case of sufficient importance, to take it up.

This selective procedure is not new. It has for years worked well, and is working well in the Supreme Court of the United States and the Court of Appeals of New York, to go no further. Without such a selective power the Supreme Court of the United States would be overwhelmed with cases. With it, that Court keeps up with its docket. The same is true with the New York Court of Appeals, one of the most highly thought of of the state courts of last resort.

The exercise of this selective preliminary consideration will of

course take some time, but obviously not as much as the full consideration of all cases would take. It is true that on cases which are taken up after special consideration there would be a double consideration, first, on the application for leave to appeal, and secondly, on the hearing. Many cases, however, would come up under the general rules granting leave. The preliminary consideration of the other cases would not be to determine whether or not the court below was right, but simply whether or not the particular case is of sufficient importance to warrant consideration by the Court of Errors and Appeals. As time went on that court could amend its general rules as experience might dictate. Incidentally in this connection the general rules appended to the proposed Act hereinabove quoted are merely illustrative, and are not intended to be my view as to what should or should not be included in the cases in which leave to appeal should be granted by general rules. Furthermore, the Court of Errors and Appeals might by brief memorandum opinions in denying special applications build up a body of precedents as to what kind of case would and what kind would not be especially accepted. The court itself could decide whether it wished special applications for leave to appeal to be made orally on special motion days or submitted on petition without oral argument. The latter method is prevailing in the Supreme Court of the United States, and I believe in the Court of Appeals in New York. In any event, I do not believe it is open to argument that the adoption of this proposed plan would result in needed relief to the Court of Errors and Appeals.

In all cases at law originating in courts inferior to the Supreme Court, there is of course an appeal to the Supreme Court. Three of the highest judges in the state, sitting together, are certainly an adequate appellate tribunal, in the sense to which every litigant is entitled to one. Inasmuch as the Supreme Court sits in three branches, its own appellate jurisdiction has three times the man power of the Court of Errors and Appeals. Each judge has only to consider one-third of the appellate cases coming before the Supreme Court, and conferences between three judges can obviously be more easily arranged than between a greater number. So far as law cases are concerned, therefore, the satisfactory tribunal inferior to the Court of Errors and Appeals already exists. No change whatsoever in the

practice or procedure of the Supreme Court's appellate jurisdiction will have to be made.

By Art. VI, Section V, paragraph 3 of the Constitution

"Final judgments in any circuit court may be brought by writ of error into the supreme court or directly into the court of errors and appeals."

The proposed Act will give a litigant defeated in a Circuit Court an alternative. He may appeal as of right to the Supreme Court, but if he wants to go direct to the Court of Errors and Appeals he may only in such cases as that court by general rule or special allowance in the particular case may permit. If he takes advantage of his appeal as of right to the Supreme Court, then under the proposed Act he can go no further except with leave of the Court of Errors and Appeals either pursuant to one of its general rules or by special permission in the particular case.

A few years ago a statute was enacted with a view to improving appellate procedure in actions at law within the Constitution. I refer to Chapter 353 of the Laws of 1931, now R.S.2:27-364 to 368. With this statute a respondent on an appeal to the Supreme Court may consent to a judgment of reversal without costs, and from the judgment entered by the clerk on such consent an appeal may be taken to the Court of Errors and Appeals. This Act I believe was passed with the blessing of the Judicial Council. I have never heard of its being availed of, nor am I surprised that it has not, for I believe that it is an unconstitutional effort to confer jurisdiction on the Court of Errors and Appeals. The Court of Errors and Appeals undoubtedly is a court of appellate jurisdiction only. The Act is an attempt to confer upon that court jurisdiction to review a judgment entered in the court below by the consent of the party, who thereupon alleges he is aggrieved thereby in his appeal to the Court of Errors and Appeals.¹ The constitutionality of the Act being, to say the least, doubtful, a respondent naturally would hesitate to consent to a judgment of reversal in the Supreme Court when his appeal

1. See *Walser v. Keuthe*, 98 N.J.L., 823 *DeFeo v. Peoples Gas Company*, 104 N.J.L., 156; *Parker v. Wallace*, 53 N.J.L. 243; *Ewald v. Ortynsky*, 76 N.J.Eq., 291.

from that judgment to the Court of Errors and Appeals would be subject to dismissal.

But be the question of constitutionality as it may, the Act, I submit, goes at the situation in the wrong way. It makes it easier to get into the Court of Errors and Appeals, and adds to that court's burden, instead of relieving that court by making final the judgment of an inferior appellate tribunal.

Would the statute hereinabove suggested be constitutional? It is submitted that it would. The provisions of the Constitution which we must consider are the following:—

Art. VI, Section 1, paragraph 1:

“JUDICIARY.

Section 1.

“1. The judicial power shall be vested in a court of errors and appeals in the last resort in all causes as heretofore; a court for the trial of impeachments; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish, as the public good shall require.”

Art. X, paragraph 1:

“***The several courts of law and equity, except as herein otherwise provided, shall continue with the like powers and jurisdiction as if this constitution had not been adopted.”

It is the former of the two provisions which is the most important. What is the meaning of the words “in the last resort in all causes as heretofore”? We must concede that it means that no court may be by the Legislature created superior to the Court of Errors and Appeals. Except insofar as the Constitution of the United States may provide for a review by the Supreme Court of the United States, the Court of Errors and Appeals must be the final Court of Appeal—the Court of Last Resort. In *Harris v. Vanderveer's Executor*, 21 N. J. Eq., 424 (E & A. 1869), which was the case in which the constitutionality of the Act providing for an appeal from the

Prerogative Court, Chief Justice Beasley, in speaking for the majority of the Court of Errors and Appeals, said at page 427:—

“It is presumed that no professional gentleman would, for an instant, contend that the legislature could deprive the decrees and judgments of this court of their quality of being conclusive***”

Does it mean that every litigant who starts a case in any of our courts has the right to have that case eventually heard and determined by the Court of Errors and Appeals? The language of the Constitution just quoted reads, it will be remembered, “in all causes.” If we can show that in any class of cases a litigant has not now the right to go to the Court of Errors and Appeals, we can demonstrate that the words “in all causes” cannot have reference to the litigant’s right to get before the Court of Errors and Appeals.

This can be very quickly shown. There is a great mass of litigation, commenced in tribunals inferior to the Supreme Court, which that Court reviews only by certiorari and not on appeal or writ of error. We all know that certiorari is a writ of grace, which the Supreme Court may in its sound discretion refuse to permit to issue. If the Supreme Court refuses to allow a writ of certiorari its refusal in so doing is not subject to review by the Court of Errors and Appeals.² So, if the Supreme Court refuses to allow a writ of certiorari, the litigant in the tribunal to review the act on which the certiorari is sought has not the right to have his case passed on by the Court of Errors and Appeals. In like manner, if the Supreme Court discharges a rule to show cause why a mandamus should not issue, its action is not reviewable by the Court of Errors and Appeals³ unless the constitutionality of a statute is involved, in which case an appeal is expressly permitted by Section 6 of the Mandamus Act P.L. (1903) 380, Now R.S. 2:83—15. If the Legislature should, as it seems clear is expressly permitted by Section 6 of the Mandamus Act, P.L. (1903) Court, other than the Circuit Courts, reviewable only by certiorari, then it is clear that no litigant in such an inferior tribunal can be sure that he can take the case to the Court of Errors and Appeals.

2. *State v. Wood*, 23 N.J.L., 360; *Post v. Anderson*, 111 N.J.L., 303.

3. *Intra-State Oil Co. v. Board of Commissioners of Orange*, 111 N. J. L. 354.

It necessarily follows, therefore, that no litigant in an action at law or any criminal proceeding, unless it be commenced in the Supreme Court or Circuit Court, has the right to take the case to the Court of Errors and Appeals.

But it may be argued that once the case gets in the Supreme Court, that the litigant there defeated has the right to go to the Court of Errors and Appeals. Such a right cannot be spelled out of the language of the Constitution. That language is, as we have seen "in all causes." It is not simply in all causes once they get to the Supreme Court. It would seem reasonably clear, therefore, that the true intent and meaning of the Constitution is simply that no tribunal can be put over the Court of Errors and Appeals, and not that every litigant has a right to take his case to that Court.

But there is another line of reasoning which is even more persuasive. That the Legislature cannot assail the jurisdiction of the Supreme Court is very clearly established. The Supreme Court cannot be deprived of its right to superintend and control inferior tribunals by means of its prerogative writs. No informed member of the Bar will doubt that proposition. Nevertheless, in *Traphagen vs. Township of West Hoboken*, 39 N.J.L., 232 (S.C. 1877), the Supreme Court held that a statutory limitation of the right to allow a certiorari to set aside an assessment after thirty days from the date of confirmation is valid. Mr. Justice Van Syckle, in a learned opinion, after emphasizing the unassailability of the Supreme Court's certiorari jurisdiction in upholding the thirty day limitation statute, said, page 237:—

"The power of the Legislature to regulate remedies, and to enact statutes of repose, by which a reasonable time is prescribed within which suits must be instituted, is too well settled to be discussed."

So, the time of exercising supervisory jurisdiction may be regulated, and that severely. The time within which appeals to the Court of Errors and Appeals must be taken can clearly be constitutionally regulated. But the power of regulation goes further than this. The Court of Errors and Appeals has statutory power to make rules to regulate procedure on appeals, R.S. 2:27A-1, for example, the form

and the time for serving a state of the case, briefs, the making of a deposit on an appeal, and noticing for argument. That Court has power to dismiss an appeal if its own rules, made by it to regulate appeals, are not complied with. Again, it cannot be true, therefore, that Section I of Art. VI. of the Constitution means that every litigant has the right to have his case heard and considered by the Court of Errors and Appeals on its merits. It is a very short step to say that the Court of Errors and Appeals may itself, in advance of argument on the merits, determine whether the case is of sufficient general importance for it to consider the same. Under the proposed statute the Court does this by laying down certain general rules as to cases which it will consider on the merits, and say that in every other case the Court must first, by a preliminary examination, be satisfied that the case is worthy of its consideration. I submit that this is nothing more than a wholly constitutional regulation of the appeal. Obviously in no sense does it limit the Court of Errors and Appeals' jurisdiction. The statute only empowers that Court to make reasonable rules for the sifting out of cases unworthy of its serious and full consideration. I feel that the statute proposed will be adjudged to be constitutional, and in that connection I cannot help but quote from the opinion of Chief Justice Beasley in *Harris v. Vanderveer*, 21 N.J. Eq., 424, (E. & A., 1869) at 425; the case upholding the constitutionality of the 1869 act providing for the first time for an appeal from the Prerogative Court:—

“There are two primary principles which are always to be borne in mind in the discussion of every question touching the limitations of the authority of the legislature of the state. The first of these is, that the legislative body is supreme, in every respect, except in the enumerated instances of constitutional restraints; and next, that such restraints cannot be imposed but by plain language, or by implication necessarily springing from the co-ordination of the several parts of the established system of government. It is evident, therefore, that the present motion cannot prevail, unless it can be made plain to the mind of the court that some provision of the Constitution exists which prevents the assumption by the legislature of the authority to pass the act in question. In the opinion of the legislative and ex-

ecutive branches of the government, this power exists. That opinion is entitled to the utmost respect, and it can, with propriety, be superseded only when this court is convinced beyond a doubt, that it is founded in error or misconception.

“The proposition to be considered then, is, not whether doubt exists as to the power of the legislature to enact the law in question, but whether it is positively certain that such power has been taken from them.”

I conclude, therefore, that the proposed statute regulating appeals to the Court of Errors and Appeals from the Supreme Court and from the Circuit Courts would be both constitutional and desirable.

We turn then to the matter of appeals from the Prerogative Court. When that court exercises its original jurisdiction there necessarily should be an appeal and obviously the Court of Errors and Appeals is the only tribunal available. We are here dealing with the constitutional jurisdiction of the Prerogative Court or Ordinary, and not with the latter as a special statutory tribunal for appeals from the State Tax Commissioner in transfer inheritance tax cases. In such cases we know the Ordinary is subject to certiorari out of the Supreme Court, and appeals cannot be taken directly to the Court of Errors and Appeals.⁴ By Art. VI, Section IV, paragraph 3 of the Constitution, however, the Prerogative Court is the appellate tribunal from the Orphans Court. By the time the Prerogative Court has passed on an Orphans Court appeal, the litigants have had their case heard in the tribunal of first instance, namely, the Orphans Court, and in one appellate court. To permit them as of right to go on to the Court of Errors and Appeals would be to give two appeals in cases, very many of which do not really rate the attention of our court of last resort. I say this because in so many of those cases the matters in dispute, while important to the litigants themselves, are of no general importance, and very frequently involve simply questions of fact, e.g., as to whether an alleged will

4. *In re Roebling's Estate*, 91 N. J. Eq., 72.

was or was not the product of undue influence, or whether the testator did or did not have testamentary capacity. At the same time, it is not believed that the Bar or litigants would be satisfied to have the judgments of the Orphans Courts finally passed on by a single judge, the Ordinary, or one of the Vice Ordinaries. The fact that the Legislature by P.L. (1869) 84, provided for an appeal from the Prerogative Court to the Court of Errors and Appeals shows that at that time there was a public demand for the appeal, and there is no reason to believe the demand is any the less today. The situation would be different, however, under the proposed statute hereinabove set out, for under it the Court of Errors and Appeals would have the right to take up any Prerogative Court case either pursuant to general rules or special permission.

Of course there could be absolutely no question whatsoever as to the constitutionality of the proposed statute so far as it applies to the Prerogative Court. At the time of the adoption of the Constitution of 1844 no appeal from the decisions of the Prerogative Court was provided for. It was in 1869, by the statute hereinabove referred to, that an appeal from the Prerogative Court to the Court of Errors and Appeals was first given. What the Legislature has given it can take away, and, a fortiori, it can permit to continue to a limited extent.

Of course under the present practice the inferior appellate tribunal, final in all cases except where the Court of Errors and Appeals saw fit to review, would be composed of a single judge, namely, the Ordinary or one of the Vice Ordinaries. I do not know whether that would or would not be generally satisfactory. If it were not, I submit that the Ordinary by virtue of his inherent jurisdiction could, if he saw fit, refer appeals from the Orphans Courts or Surrogate's to three Vice Ordinaries sitting together to hear the same for him, and to report thereon and advise what order or decree should be made; and if there were any doubt of the Ordinary's inherent authority to make such a reference there might be enacted a statute to that end reading substantially as follows:—

“The Ordinary may refer any appeal from an Orphans Court or Surrogate to three Vice Ordinaries, who are hereby empowered to

sit together and hear such appeal and report thereon to the Ordinary, and advise what order or decree should be made thereon. The Ordinary may act on the advice of a majority of such Vice Ordinaries." No litigant could claim that an Orphans Court appeal was not heard by an appropriate appellate tribunal if three Vice Ordinaries sit together to hear and determine it.

The only disadvantage that occurs to me is that the grouping of three Vice Ordinaries for appeals might take up so much of their time as to delay their work in the Court of Chancery and in the exercise of the Prerogative Court's original jurisdiction. With so much of the Chancery work being disposed of by the Advisory Masters, it may well be that this suggestion would not interfere with the Vice Chancellors' work in the Court of Chancery. Nothing short of a statistical study of the amount of the Vice Chancellors' time that is taken up by the Chancery work, as compared with their Prerogative Court work, both original and appellate, can give a satisfactory answer.

Last, but by no means least, comes the matter of appeals from the Court of Chancery. It would of course be a simple matter to enact a statute substantially as follows:—

"1: No interlocutory order or decree of the Chancellor, except orders or decrees granting, continuing, modifying or dissolving an injunction, or refusing to grant, continue, modify or dissolve an injunction, or appointing or refusing to appoint a receiver, and except decrees nisi in matrimonial causes, shall be reviewed on appeal by the Court of Errors and Appeals without the leave of that court first had and obtained. Nothing herein contained, however, shall abridge the right of an appellant from a final decree in Chancery to complain of interlocutory decrees or orders.

"2: Such leave to appeal may be given by general rules promulgated by the Court of Errors and Appeals, or by special leave granted in the particular case."

This of course is very much like the statutory provision for appeals from the District Courts of the United States to the Circuit Courts of Appeals, as provided for in 28 U.S.C.A., # 225 and 227. There is a

large body of law construing those Federal statutes. Without, however, a statistical study of the Chancery appeals in the Court of Errors and Appeals I do not feel sufficiently informed as to how much of the time of that court is taken up with appeals from interlocutory orders of the kind made not appealable under the proposed statute to say definitely that in my opinion the enactment of the statute would make a material saving in the time of the court. I am inclined to doubt that its enactment would be worth while. My feeling is that probably the time now given by the Court of Errors and Appeals to consideration of appeals from interlocutory decrees in Chancery, other than those proposed to be continued as appealable of right, is not sufficient to warrant the imposing of the new duties of preliminary consideration of such cases, and of the determination of what is or is not a final decree, and therefore appealable as of right. So far as constitutionality is concerned, what has been said above with respect to appeals from the Supreme and Circuit Courts is applicable here.

There is left among the cases which go from Chancery a group of cases which is definitely without the class which on any proper theory as to the functions of a court of last resort should be within its compulsory jurisdiction. I refer to the ordinary matrimonial case, or cases involving disputes over the custody of children. The ordinary case in any of these classes involves only disputed questions of fact, which are of great importance to the parties concerned, and therefore deserving of full consideration, not only by the court of original jurisdiction, but also by an adequate appellate tribunal, but nevertheless does not affect the state in general to a sufficient degree to be necessarily or automatically worthy of consideration by the court of last resort. Nevertheless, some review of these cases by a Bench of Judges must be provided for. Owing to the constitutional position of the Chancellor, to provide for an adequate genuinely appellate tribunal inferior to the Court of Errors and Appeals is not easy. Nevertheless, it can be done. The following proposed statute shows how:—

“1: Any party aggrieved by any order or decree of the Chancellor made in such cases as the Chancellor shall by rule provide,

may apply for a rehearing before three Vice Chancellors sitting together for that purpose.

"2: The Chancellor may refer any such rehearing to three Vice Chancellors, excluding the Vice Chancellor upon whose advice the order or decree complained of was made. Such Vice Chancellors are hereby empowered to sit together and hear such rehearing, and report thereon to the Chancellor and advise what order or decree should be made therein. The Chancellor may act on the advice of a majority of such Vice Chancellors.

"3: Such rehearing shall be called an appellate rehearing, and the right to it shall be in addition to such right of rehearing as has heretofore existed. Such Bench of three Vice Chancellors may be called the Appellate Division in Chancery.

"4: Such appellate rehearing shall be applied for within the time limited by law for taking an appeal in like cases to the Court of Errors and Appeals.

"5. In cases reviewable by the Appellate Division in Chancery no appeal may be taken to the Court of Errors and Appeals until the party aggrieved shall have first exhausted his right to an appellate rehearing.

"6. From an order or decree of the Chancellor made in accordance with the advice of the Appellate Division in Chancery no appeal shall be taken to the Court of Errors and Appeals without the leave of that court first had and obtained. Such leave may be given either by general rules or by special permission granted in the particular case.

"7. The Chancellor, in addition to his other rule-making powers, shall have power to make rules providing for the cases which shall be reviewable by way of appellate rehearing before the Appellate Division in Chancery, and to regulate the method of applying for and the practice on appellate hearings. Until such rule shall be made the rules hereto annexed in Schedule A shall be deemed to be the rules of the Court of Chancery, subject to suspension and amendment in any part thereof by the Chancellor as experience shall show to be expedient.

"Schedule A.

"Rules.

"1: Appealable orders and decrees in the following cases shall be reviewable by the Appellate Division in Chancery:—

"a: Orders and decrees in matrimonial cases, including therein suits for nullity of marriage.

"b: Orders and decrees in habeas corpus proceedings.

"c: Orders and decrees in lunacy proceedings, including therein proceedings in cases of habitual drunkards.

"2: An appellate rehearing shall be demanded by serving on the adverse party or his solicitor and filing with the clerk a notice of demand therefor, which notice shall specify the order or decree sought to be reviewed and the reasons why it is claimed to be erroneous."

As hereinabove stated with respect to the rules appended to the suggested statute dealing with appeals from the Supreme and Circuit Courts, the foregoing rules are illustrative only.

This is of course a radical suggestion and would impose considerable extra work upon the Vice Chancellors. I repeat that without a statistical study of the cases in that court and in the Court of Errors and Appeals for the last few years it cannot be determined whether or not the proposed Act would be from a practical standpoint advantageous.

My suggestions may appear radical. They are, however, less radical than any amendment of the Constitution. It is believed that they are, to say the least, worthy of serious study and consideration. Perhaps the Committee to be appointed pursuant to the resolution of the State Bar Association, adopted at the midwinter 1940 meeting will be able to make a statistical study of the several courts concerned, as hereinabove suggested.

G. W. C. McCarter.