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## *Comments on Supreme Court Practice*

(By JUSTICE JOHN T. ADAMS)

EVERY lawyer who reads the few words that I shall say in this short article has on his shelves our statutes, code, rules of the supreme court and decisions interpreting them. He has also generally well defined impressions in his own mind as to what they are or ought to be. It may be rightly conceded that it frequently happens that these impressions, based upon his study and experience, are better than those found enunciated in the books. Courts and legislatures have long recognized this fact and have gladly availed themselves of helpful and constructive criticism. It has spelled progress and resulted in the correction of evils, and the expedition and dispatch of work. It has not resulted in perfection, and I fear never will, and even that which is good today is often found to be inadequate to the needs of tomorrow. The fine thing about it all, as I see it, is the open minds with which lawyers and judges approach their important work. I must say that I have little patience with the flood of ignorant lay criticism of the noble profession of the law. Lawyers have ever buffeted anarchy and stood like bulwarks protecting our most cherished American

ideals and institutions. They always will do so. Let their detractors first cast the beam out of their own eyes, that they may see more clearly to behold the mote in their brother's eye.

The Supreme Court has three important committees, comprised of eminent trial judges and lawyers, contributing their time and talents unselfishly and without remuneration, in aid of the work of the court. They are the Rules Committee, Law Committee, and Bar Committee. Their personnel is as follows: Rules Committee, George P. Steele, Chairman, Ralph L. Carr, Merle D. Vincent, Fred A. Sabin, Charles C. Sackmann, H. E. Munson and Frank G. Mirick. Law Committee, whose particular work is the preparation of questions and examination of candidates for admission to the bar. The members of the Law Committee are Wilbur F. Denious, Chairman; Geo. W. Humphrey, Secretary; T. E. Munson, J. Arthur Phelps, Fred Farrar, Fred W. Stover, Stanley T. Wallbank, Ira C. Rothgerber, Roger H. Wolcott, and Samuel H. Kinsley. Bar Committee, investigating and examining the character of applicants: W. R. Kelly, Chairman, Robert W. Steele, Erl H. Ellis, A. L. Doud, and William E. Hutton.

It will readily be seen how indispensable these committees are in aiding the work of the court. In their several departments, we look upon them as in the nature of trial judges, and view their determinations largely in the same way. They see the witnesses, etc. Their judgments must necessarily be possessed with weight. They make their recommendations to us, and we act upon them. Our doors are always open to these committees; members of this court hold frequent conferences with them. Members of the bar do likewise. For instance, lawyers frequently suggest. changes in the rules. These suggestions are welcomed. If they come to us through a source other than the committee, it is only proper that they should be first referred to the committee for original action and this is done. It results in a vast saving of duplication of work, and insures careful consideration before being submitted here. Sometimes the best of men occasionally speak before they think. Thus, a strenuous objection was recently made to our good Clerk, Mr. James Perchard, as to the printed form of supersedeas bond in use. The gentleman was directed to compare it with the code, and it was found to be identical with it.

I have been asked by different lawyer friends concerning matters of routine in the supreme court, such as, "How are cases assigned?" "Does a justice choose the cases upon which he writes opinions?" "How are motions and supersedeas applications disposed of?" "When are they heard en banc and when in department?" And many other questions of similar import. The subject that seems to be most of all misunderstood is that of petitions for re-hearings. There is no duty of secrecy that forbids an answer to these questions. We are glad of an opportunity to reply to them.

The basis of the work of the supreme court is found in the constitution of our state. Section 5, Article 6, provides, inter alia, that the court may sit en banc or in two or more departments as the court may from time to time determine. For many years there were three departments, the chief justice and two associate justices comprising each department. There are now only two departments, each consisting of the chief justice and three associate justices. This change was made in January, 1927, by the court upon the suggestion of our present Chief Justice, Haslett P. Burke. It has the advantage of insuring the attention of a greater number of justices to each matter before the court.

The same section of the constitution provides that in case the court shall sit in departments, each department shall have the full power and authority of the court in the determination of causes, the issuing of writs and the exercise of all powers authorized by the constitution, or provided by law, subject to the general control of the court sitting en banc, and such rules and regulations as the court may make, but no decision of any department shall become the judgment of the court unless concurred in by at least three judges, and no case involving a construction of the constitution of this state or of the United States, shall be decided except by the court en banc. Not any one of the justices of the supreme court, whether writing the opinion or not, decides a case or passes on any matter alone. No motion or application of any kind made to the court is passed upon except by the concurrence of at least four judges, although the constitution says that three are sufficient. If the decision of a department is not unanimous, it goes to banc. Novel questions are frequently taken there. The participation of four judges is not merely perfunctory, but actual. An opinion does not represent merely the view of one judge, but all, unless he expressly dissents. Human endurance does not permit every judge to minutely examine every case, much as it might be desired. This is why the constitution permits the work to be divided as it is, into two or more departments.

The work of the court is divided as nearly evenly as possible, but the heaviest burden is upon the chief justice, in the nature of things, because of his many additional duties. No judge chooses his cases to write opinions, or decides upon the work that suits him best; he must take things as they come, except that he may, and properly so, decline to pass upon matters in which he may be personally interested, or in which he acted as attorney, or for other good cause. When a case is at issue, if not orally argued, it is drawn from the clerk's office by the judges. The only preference allowed is that matters shall receive attention according to the dates that the issues have been completed, except as to supersedeas applications, motions, and controversies required by law to be advanced on the calendar. Supersedeas applications, and cases orally argued are assigned by the chief justice, who is familiar with the work in the hands of each member of the court.

Probably no state in the union is more liberal than ours in the matter of petitions for re-hearings. It is my understanding that in the Supreme Court of the United States, such petitions may be filed only by leave of court, and that even when filed, they are seldom granted. The object of such applications is to give the court an opportunity to consider the points supposed to have been overlooked or misapprehended, and to correct errors, if committed. In practice, such petitions have been known, unfortunately, to have been employed to get as many hearings as possible. To illustrate, before the present rule 48 was adopted, one petition for rehearing filed in this court copied some 50 pages of matter from one of the original briefs, none of which was germane to the issues. The court adopted the present rule in justifiable self-defense, and for the benefit of litigants. The denial of the petition does not signify that we have not again reviewed the case, but only that the final rite has been performed. All such petitions are regularly listed on the calendar, by the clerk of this court, for conference. Each participating judge has a copy of the petition. They are not disposed of until after full consideration.

To me, at least, the most valuable part of our routine work consists of our regular semi-weekly conferences en banc. Opinions are discussed and read with the utmost freedom and candor, but always in a friendly way. Errors, whenever apparent, are rectified, and no pride of opinion prevents any man from altering his viewpoint if convinced that he is wrong, as all men sometimes are.

The editors of the Record requested the learned Chief Justice to prepare this article for publication. It is to be regretted that his multitudinous duties prevented him from doing so. He asked me to do it for him, which has resulted in these random thoughts of mine. They are penned in friendship and good will to the members of the bar, to whom we acknowledge ourselves immeasurably indebted for their splendid assistance in carrying on the work of the court.

# *"The District Court"*

By CHARLES C. SACKMANN, Judge

THE District Court, as we know that institution in Colorado at the present time, it being an evolution of the district courts of Territorial days, came into being by virtue of the constitutional provision known as Article VI, Section One, adopted March 14th, 1876, and going into full force and effect August 1st, 1876, upon the issuance of the proclamation of Ulysses S. Grant, President of the United States, admitting to the Union the State of Colorado.

This Section, as amended in 1886 and 1912, comes to us today reading:

> "The judicial power of the State as to all matters of law and equity, except as in the Constitution otherwise provided, shall be vested in the supreme Court, district courts, county court, and such other courts as may be provided by law. In counties and cities and counties having a population exceeding 100,000, exclusive original jurisdiction in cases involving minors and persons whose offenses concern minors may be vested in a separate court now or hereafter established by law."

Four judicial districts, with one judge in each, were originally provided for by the Constitution, by Sections 12 and 13 of Article VI, and as provided by the Constitution these were gradually increased by statute, between the years 1891 and 1921 inclusive, to the present number of fourteen judicial districts, presided over by twenty-six District Judges.

Section 11 of Article VI originally provided that,

> "The District Courts shall have original jurisdiction of all causes, both at law and in equity, and such appellate jurisdiction as may be conferred by law. They shall have original jurisdiction to determine all controversies upon relation of any person on behalf of the people, concerning the rights, duties and liabilities of railroad, telegraph or toll road companies or corporations",

and so stands today.

Into the maw of this judicial machine are fed all manner of cases involving questions of law and equity, mounting now into the thousands every year; in this judicial district, 4386 cases last year. Into this melting pot are poured every conceivable question involving interpretation of the laws, questions of procedure in legal matters, and the application of the proper remedy or remedies to the case in hand, and out of this alloy are cast in the form of opinions of the judges in the various courts, the final decisions