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The District Court

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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

of the court, subject only to review by the Supreme Court of this State.

Section 27 of Article VI of the Constitution also provides that,

> "The judges of courts of record inferior to the Supreme Court shall on or before the first day of July in each year report in writing to the judges of the Supreme Court such defects and omissions in the laws as their knowledge and experience may suggest, and the judges of the Supreme Court shall, on or before the first day of December of each year, report in writing to the Governor, to be by him transmitted to the general assembly", etc.

The above, together with the performance of the marriage ceremony now and then are all mental gymnastics which no doubt were provided to take care of any stray moments that might be found by the judges to be unoccupied, and come as rather an eye-opener to the neophyte on the bench.

Practicing for twenty-one years before our honorable courts, I became, as do most lawyers, imbued with the idea that judges are so saturated with legal learning that all legal questions are ancient history, so to speak, to them, and then to be rudely awakened to the fact that the ingenuity of counsel in finding eminent authority on both sides of every question—continually drives the judges to burning midnight oil in a frantic endeavor to find the weight of authority, is disconcerting to say the least.

While the provisions of the Constitution, as to the jurisdiction of the District Court, seem to be all inclusive, some interesting questions have arisen on these matters because of the wording of certain other provisions of the Constitution and statutes of this state as to the jurisdiction of the County Court and the Juvenile Court, and by virtue of the interpretation placed upon these provisions by our Honorable Supreme Court, certain curtailments have come about in the original jurisdiction of our District Courts.

In this connection it is interesting to note that although the District Court is given original jurisdiction of all matters at law and in equity in the Constitution, nevertheless, the County Court, by Section 23 of Article VI of the Constitution, is given original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of guardians, conservators and administrators and settlement of their accounts, and that by a most interesting series of decisions in our Supreme Court it is now rather well settled that the District Court has no original jurisdiction in these matters, concurrent with the County Court, but that the jurisdiction of that Court in the first instance is sole and exclusive, and the District Court has only appellate jurisdiction therein. I am quoting these cases herein for those who may desire to peruse them in this connection.

Clement v. Fox, 25 Colo., 39;
In re estate of Brown, Lunatic, 65 Colo., 341;
Glenn v. Mitchell, 71 Colo., 394;
Currier v. Johnson, 19 C. A., 94;
Berry v. French, 24 C. A., 522.

Another development along this line has to do with the constitutional provisions and statutes relating to the juvenile courts.

The constitutional amendment of 1912, Const. 1921, Art. VI, Sec. 1, gave the legislature power to give the Juvenile Court exclusive jurisdiction of matters involving minors. In 1923, the legislature enacted Chapter 78 of that year, saying, in reference to juvenile courts, and eliminating the parts not pertinent to this discussion,

> "Such courts shall have coordinate jurisdiction with the District and County Court in certain cases. Such courts shall also****have exclusive jurisdiction, subject to appeals and writs of error,****in all cases con-

cerning neglected, dependent or delinquent children,****custody or disposition of children and the care and protection of their persons from neglect, cruelty, abuse.****Nothing in this Act shall be construed to revoke or interfere with the jurisdiction, practice or proceedings as now provided by law in other courts of record in this state, in cases in such court relating to the custody or disposition of children in divorce cases. ****provided that the disposition of the custody of children in any divorce case shall not be held to interfere with the jurisdiction of the Juvenile Court in cases concerning the dependency of such children under the laws of this state concerning dependent children."

The Supreme Court, in attempting to harmonize the various sentences in this Act, reached the conclusion that the Juvenile Court, having exclusive jurisdiction in matters concerning the dependency of children, is not to be deprived of that jurisdiction by proceedings with reference to children in divorce actions in the District Court; that the District Court may proceed in such actions with regard to children as heretofore, subject to the power of the Juvenile Court to deal with those children exclusively if they are or become dependent, the final result being that although a case be pending in the District Court in divorce, and orders entered by that Court for the temporary or permanent custody of children by the filing of a dependency action in the Juvenile Court, the District Court is temporarily ousted of all jurisdiction over the children until that issue is determined in the Juvenile Court.

People vs. Juvenile Court, 75 Colo. 493.

While this conclusion is sound in logic and reasoning, because of the confusion in the wording of the Act, nevertheless, having been a member of the legislative body which passed this Act, and having personally had a great deal to do with the matter in the House of Representatives, I know that such was not the intention of the legislative body, and that the wording of the Act,

"Nothing in this Act shall be construed to revoke or interfere with the jurisdiction, practice or proceedings as now provided by law in other courts of record in this State, in cases in such court relating to the custody or disposition of children in divorce cases,"

was taken and understood by the legislators as avoiding the situation which has now arisen by virtue of this decision.

As to the litigants and attorneys, I have been impressed in two ways: First, by the lack of familiarity on the part of attorneys and litigants with the rules of the court, as for instance, that motions to strike should be set out verbatim as to the matter to be stricken, etc.; that all motions except of course should be in writing; that cases are assigned by chance to the various divisions, and no attempt should be made to interfere with this rule; that time for argument of motions shall be limited to fifteen minutes, etc.; that judges are prohibited from counseling, advising or performing any services relating to the practice of law.

But more particularly I have been impressed with the fundamental reverence, confidence and finality with which both litigants and attorneys present their disputes to the judgment of the courts, and their willingness when judgments are carefully, conscientiously and justly entered, to abide by the judgment of the Court. Such respect and confidence for the courts places an immense responsibility upon the shoulders of our judges and must needs furnish an ideal that will always be a guiding star for the individual judge, driving and urging him always to greater effort, and desire to be careful, right, just and conscientious in all his work and dealings with litigants and attorneys, so

that this confidence and faith may never, so far as is humanly possible, be violated.

Somewhere I have read and had burned into my mind these words:

"All true laws and all human justice are but the developments of that infinite justice which is of the essence of the deity. He who assumes to judge his brethren, clothes himself with a power like that of God. Act so that men may praise Thy moderation, Thine inflexibility, Thy equity and Thine integrity. Regard not alone the judgment of the living but seek the approval of those who shall live hereafter, whose verdict will be more just even if more severe. Woe unto thee, if being thyself unworthy, vicious or criminal, thou dost assume to judge others and still more if thou givest corrupt judgment for then will thy memory be execrated."

This might well be a creed for every judge on the Bench, and I am sure expresses their conception of their duties as such.

Mr. Jarndyce in the Twentieth Century

By WAYNE C. WILLIAMS, of The Denver Bar

IT is now 75 years since Dickens' immortal lawsuit first appeared in the pages of "Bleak House". It is the most noted lawsuit that ever was tried—in fiction—and even today the mere mention of "Jarndyce vs. Jarndyce" brings a smile of recognition to the face of every lawyer and every reader of the immortal Victorian novelist.

And who has not read him? Not to have read Dickens is to miss the best English novels that reveal the true conditions in England in the Victorian age.

Of course the book stands are groaning under the load of novels that pour out of the presses almost weekly; of course there have been literally thousands of books since Dickens wrote and yet here is literary quality that persists and—

But this is not a literary treatise; this is a purely legal document, about purely legal matters, viz: to wit: the English Chancery practice.

Since this is not a book review we cannot stop to moralize on the affairs of Richard and Ada, of Mr. Guppy and Mr. Turveydrop. We may lament the death of Jo (that masterpiece of fiction) and enjoy the whimsical doings of Mr. Skimpole—

"God save the mark",—but we cannot stop to analyze these historic characters.

There is no doubt about the inner motive that prompted Dickens to write his legal masterpiece; he set out to point the finger of ridicule at the ancient, slow English Chancery Practice and he did it with a master hand.

Dickens hated the whole system of chancery; he had hated it from the days when he studied law and droned through old English cases as a reporter; he had no stomach or taste for the law and hating the delays of the law he overlooked its vital relation to the rights of men and the security of property; he missed its logical structure, its profound relation to the growth of human society; its larger aspects in a world of law. All this the brilliant English novelist was a complete stranger to. He saw the defects of ancient chancery practice and he dipped his pen in unusually vitriolic ink and began his assault.

Nothing was ever better done. When critics, smarting under the keen satire