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Comments on the Report of Committee on Judicial Administration

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COMMENTS

At the annual April-May, 1943, meeting of the Louisiana State Bar Association in Convention, after Mr. Charles F. Fletchinger, Chairman of the Committee on Judicial Administration, had read and discussed the report of that Committee to the Convention, and after that report had been discussed at length by the members, including myself, I offered a resolution approving the recommendations of the Committee. That resolution was unanimously adopted by the Convention. It not only approved the report of the Committee, but the Supreme Court of Louisiana was memorialized by the Convention to "earnestly consider the report of the Committee, suggesting ways and means for improving the administration of the law in this State, by inaugurating a system of securing reports and statistical data from the inferior courts for the use by the Supreme Court in the exercise of the powers inherent in the Supreme Court under the Constitution of 1921, and also by adopting a method for holding judicial conferences, with the object of making effective the Committee's recommendations in respect to both subjects."

My position now is the same as it was then, and my comment on the Committee's report will be substantially a repetition of what I said in discussing the report before the Convention.

STATISTICS

The power of the Supreme Court to require the judges of the inferior courts to furnish statistical information is clear, and the value of such statistics is obvious.

Such statistics would keep the Supreme Court informed as to (a) the amount and character of the business being done by the judges of the several districts, (b) who is earning his pay and who is not, (c) which judges render decisions promptly, (d) which judges generally give written reasons for their decisions, (e) which judges, by their industry and good judgment justify appellate courts in generally accepting their findings of fact, and which do not; and much other valuable information.

The contemplated statistical information, if properly compiled and analyzed, would be invaluable to the Supreme Court in connection with the interchange of judges, and much good would be accomplished by such interchange. Some of our judges have very little to do, while many others, because of their crowded dockets, cannot possibly do their work properly.

I have no fear of any miscarriage of justice resulting from a properly conducted plan for the interchange of judges, and I believe that often the quality of justice would be improved there-

by. The federal courts have done this very thing for many years, and I think it is safe to say that the practice has resulted in much good and, as far as I know, no evils have arisen as a result thereof. Printed forms that would elicit the proper information could be prepared so that no great amount of time or effort on the part of the judges would be required.

JUDICIAL CONFERENCES

The value of judicial conferences surely cannot be doubtful, but I think that they should be postponed until after the war. If they are to accomplish their full purpose, attendance should be made compulsory, and the expenses of the judges in attending the conferences should be paid.

A free discussion by the judges of their common problems would undoubtedly greatly improve the administration of justice; it would make the practice of law more uniform in the several districts, and would show some of the judges how very incorrect some of their practices are. The practice in some districts is so different from the practice in other districts that a lawyer never quite feels at home in a district in which he has not previously tried a case or two, and some of the practices that are indulged in and that are being enforced are contrary to both the letter and the spirit of plain and important statutory provisions. Some of these illegal, unauthorized, and improper practices have the force and effect of unwritten bureaucratic laws, and may easily result disastrously to the client of an otherwise well trained lawyer. And the trouble is that there is no way that I know of to ascertain what these practices are, except by consulting and taking the word of the courthouse officials who never seem to understand an attorney's lack of knowledge of these unwritten traditions. An exaggerated instance of what I mean is the method employed in the Parish of Orleans in the fixing and paying of inheritance taxes. Section after section of the State Inheritance Tax Law[1] (Act 127 of 1921, as amended) makes it clear that no one except the judge of a court of competent jurisdiction can fix and determine the amount of the inheritance taxes, if any, that are due by the heirs or legatees of a deceased person, and that it is improper to pay such taxes until the amounts due have been judicially determined. It is a judicial function. Notwithstanding this, "it is not the practice" for the judges of the Civil District Court for the Parish of Orleans to fix inheritance taxes. This important judicial function, apparently by common consent, has

1. La. Act 127 of 1921, as amended by La. Act 44 of 1922 [Dart's Stats. (1939) §§ 8556-8580].

been surrendered entirely to the attorney to assist the Inheritance Tax Collector (the Clerk of the Civil District Court in the Parish of Orleans) and, as a matter of practice, in this court the attorney for the Inheritance Tax Collector fixes extrajudicially the amount of the inheritance taxes, and the taxes must be paid to the Inheritance Tax Collector before the matter may be presented to the judge. Apparently, after the inheritance taxes have been fixed by the attorney for the Inheritance Tax Collector and have been paid to the Inheritance Tax Collector (but not before), if the attorney for the executor, administrator, or heirs insists upon it, the judge will fix the amount of the inheritance taxes in the amounts at which they have already been fixed by the attorney for the Inheritance Tax Collector, if, and only if, his Honor is first presented with the receipt of the Inheritance Tax Collector showing that the inheritance taxes in the amounts which you are presently asking him to fix them have already been paid. This practice is so well established in that jurisdiction that it is now like the laws of the Medes and Persians, "which changeth not." It would probably take a constitutional amendment to interfere with it.

The above described practice and my knowledge with respect thereto, are the result of experience. I was once bold enough to open and probate a succession of a right considerable amount, though very simple in nature, in that jurisdiction. I had prepared the requisite pleadings to have the inheritance taxes due by the several legatees fixed and determined so that the same could be paid and satisfied. I addressed the usual petition to the court and attached thereto a copy of the will, a copy of the inventory and appraisement, a sworn list of debts, and the written consent and approval of the attorney for the Inheritance Tax Collector and the legatees, and presented myself armed with these documents to one of the judges of the Civil District Court and requested that he render a judgment fixing the amount of the inheritance taxes so that they might be paid, and so that the legatees might, thereafter, be recognized and sent into possession. He courteously but dogmatically and firmly told me that "I have nothing to do with inheritance taxes," and he refused to have anything to do with my application until I had paid to the Inheritance Tax Collector the amount of the inheritance taxes that had been fixed and determined solely by the attorney to assist the Inheritance Tax Collector. Having always been lucky, and feeling that nothing would likely happen by following the laws of the Medes and Persians, and being convinced that the difficulties

surrounding the attempt to proceed otherwise were more onerous than the risk involved, I concluded to follow "the practice" and pay the Inheritance Tax Collector the amounts at which the inheritance taxes had been extrajudicially fixed. Having done this, I then presented to the judge the receipt of the Inheritance Tax Collector showing the payment of the amounts fixed by the attorney for the Inheritance Tax Collector, whereupon the judge reluctantly rendered a judgment fixing the amount of these taxes in the amounts at which they had already been fixed by the said attorney. It was obvious, however, that his Honor did not consider it either necessary or proper for him to fix the inheritance taxes at all, and that he did so merely as a favor to me, for which I was very grateful.

It would be most helpful for our judges in the centers of population to rub elbows with our judges in the rural districts, and *vice versa*. Each of them would learn a lot from each other.

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The report of the Committee on Judicial Administration submitted to the Louisiana State Bar Association on April 30, 1943, reflects the mature thought of the members of this Committee emanating from many lengthy and considered discussions of the subject. This committee in its study had the benefit of much research on the question of "Judicial Statistics" and "Judicial Conferences."

Promotion of the efficient administration of justice has been a matter of great concern to the American Bar[1] and has received the attention of America's leading jurists for many years. That Louisiana should take a forward step in this move for judicial reform was noted by this commentator in an address before the New Orleans Bar Association in 1942, where it was observed: "At this time, no one is charged with the responsibility of coordinating the work of the various courts. The idle judge is not assigned to aid in expediting the business of a court whose calendar is congested unless the judge of that court is on leave. The judge who takes a case under advisement and keeps it, until it has 'grown whiskers' has no one to account to. No lawyer has the temerity to wield the statutory club to jar him loose. Article

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1. At the Chicago meeting of the American Bar Association, Judge John J. Parker of North Carolina was awarded the American Bar Association medal for his patient and untiring leadership in this field.