REFORMING THE PHILIPPINE JUDICIARY

Two measures are now being considered by the Philippine Legislature for the introduction of reforms to our judicial system. One seeks to increase the number of justices of the Supreme Court, and the other would establish an intermediate court of appeals. The second may involve constitutional changes if it is to become effective at all. It may be of interest to those who are anxious to see improvements in our judiciary to know that movements have also been on foot in the United States toward the same end. One very important and well-considered plan was that of the American Judicature Society. Perhaps some modifications are needed before one such system may be introduced into these Islands. But its suggestion are nevertheless of great assistance to those who are working for the establishment of better Philippine courts. We have, therefore, decided to reproduce hereinbelow the draft of an act to create a general court of judicature prepared by the American Judicature Society, together with its explanatory comments appearing in the December, 1927 issue of the Journal of the American Judicature Society.

"Except in a few of our smaller and older states there has been no administrative unity in our judicial department since territorial days. The need was not felt when a very small corps of judges rode the circuits and then convened to hear appeals. But at every step in evolution since those primitive times the need for unified administrative authority has become more emphatic, until in our generation we have in most states a large number of localized judges, who, with the reviewing judges, constitute an extensive and complex system. There has been no serious difficulty with respect to the essential judicial function; jurisdiction and venue are defined; only procedural steps are to be blamed if efficiency is impaired.

"Administration, however, which should be thoroughly organized like any official business, is unorganized, personal and lacking unity. A brief survey of the situation in the average state discloses a total disregard for unified administration. We find a large number of judges working in local courts with no administrative direction and no administrative relations between the inferior, nisi prius and appellate departmentts. The need for more judges and courts has been met from time to time by enactments increasing the complexity of the system. In some

states there are scores of specially created courts of which no two are alike. In some states there are single counties in which scores of judges sit with little or no authority over administration and consequently no real responsibility. Throughout the whole system there is no person and no group that is responsible for the important and constantly growing business of administering justice. There is virtually no keeping of state judicial statistics.

"No argument is required to prove the need for unifying the judicial department so that every judge may feel that he is part of a state-wide system, working with his numerous colleagues in the single great service of rendering justice efficiently. The only question is as to practical means. A straightforward solution of the problem involves constitutional change. It is not easy to interest the public in judicial reform sufficiently to secure amendment of a constitution, and constitutional conventions are not frequent. But a great deal can be accomplished toward unification, with immediate benefits by establishing judicial councils. Even where they have only advisory power they can do much to unify the judiciary. They can survey the system as a whole, draft statutes as needed, and advise the courts as to policies making for unified administration.

"Ideally the judicial council should itself have a great deal of administrative power. It should institute and administer a system of recording data in all courts. It should supervise the transfer of judges and so utilize the full judicial power of the state and prevent local congestion of calendars. It might well have the rule-making power, which involves a function largely administrative in character. In fact, a state judiciary having a judicial council with such powers would virtually be unified by that very fact. It is encouraging to realize that our judicial councils are likely to acquire added powers as they prove their worth. One of the latest, the California Judicial Council, has begun its work with a very extensive survey looking to the virtual supervision of the administrative function, which is now so essential and has been for such a long time undeveloped.

"The judicial council movement represents a growing appreciation of the need for unified administration. *It has the advantage of requiring no constitutional amendment. It is inexpensive.* It may begin with only advisory powers. It may work in narrow confines until it has proved its worth. Ten states have created judicial councils in less than five years. Four such councils were created by legislation in the year 1927. It appears likely that the movement will gain even greater momentum in the next few

years. It is possible tha the judicial coucil, with added experience and increased powers, will afford an adequate solution of the insistent need for unification.

"It must not be assumed, however, that such a slow and uncertain evolution is the only prospect. It may instead afford the education that will result in a demand from both lawyers and public that the constitution be amended to permit of creating a unified judicial system, 'one great court of justice.'

"There is no reason for holding that thoroughgoing reform is impossible. With constitutional details wiped out unification can be accomplished by legislation which does not disturb the essential judcial function, that does not alter the status of any judge or lesser official. If constitutional conventions were more frequent substantial progress could be expected. The history of a few recent conventions substantiates this belief. In the Louisiana convention of a few years ago a considerable part of the principle of unification was incorporatetd. In the Illinois convention more recently the reorganization of the courts of Cook County, affecting over eighty judges and seven courts, to say nothing of the large number of justices of the peace, was done most acceptably, but the revised constitution was not approved. In such a state as Illinois no constitution can be framed that will be aproved as a unit. The Missouri convention still later submitted a judiciary article separately which very thoroughly embodied unification with an administrative council possessing rulemaking power. That convention was quite readily persuaded of the need for organizing its judiciary for efficiency. This article received a majority vote in all the larger centers, where there had been some education of voters, but when returns from rural counties came in it was found to have been defeated. Probably it would have won but for an unpopular provision for making up divisions of the supreme court from the trial bench.

"So it appears that constitutional authority is by no means unobtainable. In a matter of such great significance to our courts there is a need for wider understading of the principles involved. To that end the American Judicature Society some years ago devoted a great deal of effort to the drafting of a model state-wide judicature act, creating a single court of justice to embrace all judicial officers from the highest court to the lowest. The drafting afforded means for clarifying ideas, for solving problems and harmonizing the various parts. The act appeared in its revised form, after criticism by a council of over three hundred lawyers, as Bulletin VII-A.....

"In this number we present all the sections pertaining to organization and structure of the unified state court, omitting only a few sections concerning details of the offices and salaries. Some of the longer notes have been condensed to save space. Attention is directed to the diagram of the court organization, showing the simplicity and homogeneity of the plan."

DRAFT OF

AN ACT TO CREATE THE GENERAL COURT OF JUDICATURE AND TO PROVIDE FOR THE PRACTICE AND PROCEDURE THEREIN

PART I

Constitution and Judges of the General Court of Judicature

Sec. 1. *Consolidation of Courts.*] The following courts [here name all the courts such as Supreme, Apellate, Circuit, Probate, County, Municipal and Justices of the Peace in the state] shall be united and shall constitute under and subject to the provisions of this Act, one General Court of Judicature for the state.

Sec. 2. *Present judgeships not abolished.*] Upon the expiration of the term of office of the judges of [here name all the courts united by this Act], said offices shall not be filled in the manner hitherto provided by law, but the same shall be deemed filled by such one or more of the judges of the General Court of Judicature as may be entitled to exercise all or any part of the jurisdiction or power heretofore exercised by the judges of the courts united by this Act.

Sec. 3. *General Court to have permanent divisions.*] The General Court of Judicature shall consist of several permanent divisions, which shall be known as follows: The Court of Appeal, the Superior Court, and the County Courts. Each of the permanent divisions shall have and exercise the jurisdiction hereinafter conferred by the Constitution and this Act, or under the authority thereof, and that only.

Sec. 4. *The judges and the Chief Justice.*] The judges of the General Court of Judicature shall be the Chief Justice, the Justices of the Court of Appeal, the Judges of the Superior Court, the County Judges and the Associate County Judges.*

**Sec. 4.*

At the present time the chief justices of supreme courts exercise little or no administrative power. In consequence we have come to look upon the position as one virtually identical with the positions held by associate justices. One imbued with this view is likely to object that a chief justice cannot take time for the administrative duties imposed upon him

in this act, and to suggest that such duties should develop upon a new official, who might be called minister of justice. It seems far better, however, to have a single head of the judicial system, and one who at least possesses judicial power co-equal with other justices of the supreme court division. The Court of Appeal is presumed to have a sufficient number of justices so that the chief justice will not be burdened with judicial duties to the extent now common.

SEC. 5. *The Judicial Council.*] There shall be a Judicial Council of the General Court of Judicature which shall be constituted in the manner and have the powers and duties hereinafter provided.

SEC. 6. *Judges not to practice law.*] No judge of the said General Court of Judicature shall take any part, directly or indirectly, in the practice of law.

SEC. 7. *Annual meetting.*] A meeting of all the judges of the General Court of Judicature, of which due notice shall be given to all said judges, shall assemble once at least in every year, on such date and at such place as shall be fixed by the Chief Justice, for the purpose of

1. Considering the operation of this Act and the rules of the court for the time being in force; and also

2. The working of the several offices; and

3. The arrangements relative to the duties and officers of said court; and

4. Of inquiring and examining into any defects which may appear to exist in (a) The system of procedure; or (b) The administration of the law by said General Court of Judicature.

SEC. 8. *Duty of Chief Justice at meeting.*] It shall be the duty of the Chief Justice at such meeting.

1. To present his annual report relating to the work of the court. This report shall include (a) Full judicial statistics regarding the business done by the court and by each permanent division thereof for the year ending December 31 next preceding; and (b) The state, on said last mentioned date, of the dockets of the permanent divisions of the said General Court and of the several subdivisions and branches of the permanent divisions respectively. Such statistics shall be collected under at least the five following heads or others as detailed and comprehensive: litigation, efficiency, social, criminal, financial.

2. It shall be the duty of the Chief Justice also to submit to the meeting (a) any amendments or alterations which it would in his judgment be expedient to make in this Act, or otherwise relating to the administration of justice; and (b) any other provisions which cannot be carried into effect without

the authority of the legislature, which in his opinion are expedient for the better administration of justice.*

SEC. 9. *Chief Justice to Report.*] The chief justice shall report to the governor of the state what, if any, action was taken by the General Court of Judicature with reference to any recommendations or proposals submitted by the Chief Justice at the last meeting.

SEC. 10. *Extraordinary meetings.*] An extraordinary meeting of the General Court of Judicature may be convened at any time by the chief justice.

**Sec. 8.*

No special provision is made for a bureau of statistics. The requirement that the Chief Justice shall report upon the matters referred to in this section and that certain statistics shall be collected is thought sufficient to cause him to set in motion machinery for the collection of data and that this would necessarily result in a bureau.

**Sec. 10.*

A general state convention of judges as a whole and in divisions is provided for. (See Secs. 56 and 57.)

PART II.

The Court of Appeal

Introductory Note

A reviewing court of more than seven members is impracticable. If such a court provided individual attention of every justice to every case it would dispose of very little business. A court of three members is large enough for nearly all kinds of cases and will dispose of more business with a higher average of personal attention on the part of all justices than one of five. An increase from five to seven cannot possibly mean larger productivity unless by working in such manner as to restrict individual attention to every case. In a court of seven there is necessarily an aproach to the very harmful "one man opinion." However, it has been the American practice to increase supreme courts to seven members before creating intermediate apellate courts, so that the states generally fall into two classes, those that have a supreme court of five or seven members only, and those that suplement such a court with one or more separate intermediate apellate tribunals. The few states which have but one reviewing court sitting in two divisions, notably Kentucky and Washington, avoid the difficulty above referred to and to some extent afford examples of the principles embo-

died in the drafts that follow. The act presents below the needs of a state which has not created an intermediate court. Following Section 24, alternate sections are provided to effect co-ordination of structure in states having intermediate appellate courts.

Any scheme for appellate courts should provide for increase of production to meet temporary demands, and increase to meet permanent demands. Both situations are certain to arise. As an approach to the entire problem an outline of the expedients that have employed may be useful.

1. Under earlier conditions a reviewing court of three handled all appeals, oral arguments and opinions were usual, and the justices participated equally in all stages of the work.
2. With growth in population and litigation the court was increased to five or seven members and the attempt to increase productivity could not succeed except at the expense of deliberation and equal participation. Oral argument was discouraged, the lapse of time between the hearing and the opinion making oral argument appear of little avail as against the printed brief.
3. When permanent relief was needed resort has often been had to the temporary expedient of adding one, two or three commissioners. While excellent work has often been done by such assistants there is a sense of dissatisfaction with the method and a departure from equal participation by all the justices.
4. A better method has been dividing the court into divisions of two and two, or three and three, with the chief justice sitting with both divisions. But it tends toward a hasty concurrence, or none at all, and decisions are believed to suffer as precedents for lack of consideration of all the judges of the court which they are supposed to bind.
5. To gain productivity in a court of five or seven the cases are allotted to individual justices who submit opinions that are concurred in by justices who have not closely read the record and briefs, and whose consideration is largely limited to the matter of whether the opinion as written appears sound. To prevent this, cases sometimes discussed in banc before being allotted, but it is impossible to preserve equal participation and at the same time increase the volume of decisions of cases *passed upon. A loss at one point or the other is inevitable.*
6. *Further increase in population and litigation commonly results in setting up one or more intermediate apellate courts.* Most cases are appealed first to the intermediate court and

often there are two appeals with waste of time and money to litigants and the waste of time on the part of judges.

7. A later stage is to make the judgments of intermediate courts final in certain classes of cases. There are several plans involved:

a. The judgments of the intermediate court are made more or less final by a rule that the court may find the facts finally.

b. Sometimes the judgments of two or more such intermediate courts are made final unless their decisions differ as to the law, or there is a dissent, in which case a second appeal to the supreme court is allowed. Under this plan a defeated litigant will sometimes find that a second appeal in another cause has established the law to be as he contended, but he has no relief.

c. In some instances, as in the United States courts, a second appeal is discretionary with both intermediate and final courts. The highest court is eventually enabled to prevent being swamped by permitting only a small portion of the appealed cases to reach it.

The principles deduced from the foregoing experience are as follows:

1. There should be available more than enough judges to take care of the usual run of business so that temporary increases of work may be taken care of without delay. Delay begets more appeals inevitably. The same need arises frequently when one or more justices are under disability because of ill ness, but our rigid systems have never provided for this serious contingency.
2. The extra force thus needed may be permanently attached to the appellate court and assist at times in trial work, or may be permanently rated as trial judges and drafted for appellate work when needed.
3. All of the work of determining appeals should be considered as a unified function and all the tribunals therein engaged should constitute a single court of appeal, though the personnel may be numerous enough to imply several divisions.
4. This single court of appeal, while subject to the general control of the administrative body of the entire system, and to the rule-making power, needs also latitude for self-regulation.
5. In the appellate court large enough to justify divisions there is needed a permanent central division vested with final authority with respect to the decisions made by any division. This central division is the court of last resort, appropriately passing upon constitutional questions, and may well be known as the supreme court, or first division.

6. In the appellate court of any state there is needed:
a. Power to administer the appellate business according to experience, and to meet new conditions.
b. Rules under which this power may be exercised. These rules should be formulated by the judicial council and administered by the chief justice.
c. The chief justice should have power to assign as presiding justices of additional branches of the court of appeal one or more justices of the central division.

PART II.

The Court of Appeal

SEC. 11. *Jurisdiction.*] The Court of Appeal shall be a court of record and shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of the Superior or County Courts, or of any judges or judge of each of said courts respectively, subject to the prvisions of this Act, and to such rules and orders of the Judicial Council for regulating the terms and conditions on which such appeal shall be allowed, as may be made pursuant to this Act.

For all the purposes of and incidental to the hearing and determining of any appeal within its jurisdiction, and the amendment, execution and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the Court of Appeal by this Act, the Court of Appeal shall have all the power, authority and jurisdiction by this Act vested in the Superior or any County Court, by this Act or any rule made under the authority hereof.

SEC. 12. *Constitution and first judges of the Court of Appeal.*] The Court of Appeal shall consist of the Chief Justice, ... associate justices and such additional justices as may from time to time be required, as hereinafter provided.

The first associate justices of the Court of Appeal shall be the justices of the Supreme Court at the commencement of this Act.

The term of office of each of said associate justices shall be such as is provided in the Constitution of the state.

SEC. 13. *Supreme Court Division of Court of Appeal.*] The Chief Justice and the associate justice of the Court of Appeal who may be at the commencement of this Act Justices of the Supreme Court, shall constitute the Supreme Court Division of

the Court of Appeal. The Chief Justice shall be the Presiding Justice of the Court of Appeal and of the Supreme Court Division thereof.

SEC. 14. *Additional branches of Court of Appeal.*] The Judicial Council, with the approval of the Chief Justice, shall have power to create one or more branches of the Court of Appeal, of not less than three members each and to prescribe what causes shall be assigned to the said branches, and upon what terms a cause determined by any branch may be transferred to the Supreme Court Division of the Court of Appeal to be heard therein.

The Chief Justice shall have power, in his discretion, to require any associate justice of the Court of Appeal who is a member of the Supreme Court Division thereof, to preside over or be a member of any additional division of the Court of Appeal; provided, however, that the duty of sitting in the Supreme Court Division and taking part in the decision of causes therein shall not be interfered with.*

Sec. 14.

When the Supreme Court Division sits as such it is composed of its full quota of justices and at least a quorum must be present.

SEC. 15. *Additional justices of Court of Appeal.*] The Chief Justice may request the attendance at any time of any judge of the Superior Court to sit in the Supreme Court Division of the Court of Appeal in place of any member thereof absent through illness or for any other cause or as an additional justice in any additional branch of the Court of Appeal. Any judge whose attendance is so requested shall attend accordingly and shall be deemed to be an additional associate justice of the Court of Appeal.

Every such additional judge during the time he attends the sittings of the Court of Appeal shall have all the jurisdiction and power of a justice of the Court of Appeal, but he shall not otherwise be deemed to be a justice of said court or to have ceased to be a judge of the division of the Superior Court to which he belongs.

SEC. 16. *Terms retained for special purposes.*] In all cases in which under the law as now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any process is required to be returned or any act is required to be done in any cause now or hereafter transfered to or pending in the Court of Appeal or any branch thereof, the same may continue to be referred to

for the same or like purposes, unless and until provision is otherwise made by any lawful authority or by the Judicial Council.

SEC. 17. *Time and place of sittings of the Court of Appeal.*] The sittings of the Court of Appeal or any branch thereof, shall occur at such times and places as shall be provided by the Judicial Council. Subject thereto the Supreme Court Division of the Court of Appeal shall sit at the times and at the places prescribed for the holding of sessions of the Supreme Court at the commencement of this Act.

SEC. 18. *Any justice of the Court of Appeal may act as judge of the Superior Court.*] Upon the request of the Chief Justice, it shall be lawful for any justice of the Court of Appeal who may consent so to do,

1. To sit and act: a. as a judge of the Superior Court or to perform any other official or ministerial acts (1) for any judge absent from illess or any other cause; (2) or in the place of any judge whose office has become vacant, b. or as an additional judge of any division of the Superior Court.

2. While so sitting and acting any such justice of the Court of Appeal shall have all the power and authority of a judge of the Superior Court.

SEC. 19. *Duty of justices of the Court of Appeal to sit elsewhere.*] It shall be the duty of every justice of the Court of Appeal, who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business assigned to the Branch of the Court of Appeal to which he may be regularly attached, to take part if required by the Chief Justice in the sittings of any other branch of the Court of Appeal or any other branch of the Court of Appeal or any branch of any division of the Superior Court.

SEC. 20. *Practice and procedure in Court of Appeal.*] The jurisdiction by this Act transferred to or conferred upon, the Court of Appeal shall be exercised (so far as regards practice and procedure) in the manner provided by this Act, or by any rules of practice and procedure included in the schedule of rules attached to this Act, or by such rules and orders of the Judicial Council as may be made pursuant to this Act; And where no special provision is contained in this Act or in any such rules or orders of the Judicial Council with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the court from which such jurisdiction shall have been transferred.*

Sec. 20.

What orders, final or interlocutory, may be taken by appeal to the Court of Appeal, or from a branch of three judges of the Court of Appeal to the Supreme Court Division is not determined by the act, but is left to the judiciary article, or to the practice act, or preferably, to rules of court.

SEC. 21. *Proceedings incidental to appeal before a single justice.*] In any cause or matter pending before the Supreme Court division or any additional branch of the Court of Appeal, any proceedings therein, not involving the decision of the appeal, may be had by a single justice of such division or additional branch of said Court of Appeal; and a single justice of any such division or branch may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single justice may be discharged or varied by the Supreme Court division or any additional branch of the Court of Appeal.

SEC. 22. *Appeal from interlocutory orders may be heard by two justices.*] Every appeal to any additional branch of the Court of Appeal

1. Shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three justices of the said court sitting together and

2. Shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two justices of the said court sitting together.

Subject to the provisions contained in this section, the Court of Appeal may sit in several divisions at the same time.

SEC. 23. *No justice of Court of Appeal to sit in any appeal from his own order or rehearing.*] No justice of the Court of Appeal shall sit as a judge on the hearing of an appeal from any judgment or order made by himself or as the result of any hearing in which he shall have participated as a judge.

SEC. 24. *Meetings of justices of Court of Appeal.*] The justices of the Court of Appeal shall meet once in each year at the time and the place of the meeting of all the judges of the General Court of Judicature as hereinbefore provided, and at such other times and places as may be required by the Chief Justice, for the consideration of such matters pertaining to the administration of justice in the Court of Appeal as may be brought before them.

At such meetings the justices of the Court of Appeal shall receive and investigate or cause to be investigated, all complaints

presented to them pertaining to said Court of Appeal and to the officers thereof, and shall take such steps provided by law as they may deem necessary or proper with respect thereto.

The said justices of the Court of Appeal so meeting, shall have power to recommend to the Judicial Council all such rules and regulations for the proper administration of justice in said Court as to them may seem expedient.

PART III.

The Superior Court

(A) JURISDICTION

SEC. 25. *Jurisdiction conferred upon Superior Court.*] The Superior Court established by this Act shall be a court of record. There shall be conferred upon and vested in such court,

1. Original jurisdiction and such appellate jurisdiction from the County Courts as may be provided by the Judicial Council also; also

2. All the jurisdiction and powers of [here name the courts, other than those with appellate jurisdiction, that have been united to make the General Court of Judicature] as constituted before the taking effect of this Act, or capable of being exercised by all or any one or more of the judges of said courts respectively, sitting in court or chambers or elsewhere, when acting as a judge or judges in pursuance of any statute, law or custom;

3. All powers given to any such court or to any such judge or judges by any statute, and

4. Ministerial powers, duties and authorities incidental to any and every part of the jurisdiction so transferred.

SEC. 26. *Transfer to Superior Court of duties and powers other than judicial.*] If in any case not expressly provided for by this Act, a liability to any duty or any authority or power not incident to the administration of justice in any court whose jurisdiction is transferred by this Act to the Superior Court, shall have been imposed or conferred by any statute, law or custom, upon the judges, or any judge of any such courts, every judge of the said Superior Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority and power in the same manner as if this act had not been passed and as if he had been duly appointed the successor of a judge liable to such duty or possessing such authority or power before the passing of this Act; provided, however, that the Chief Justice,

1. May perform wholly or in part said duties, or exercise such authority and powers on behalf of the Superior Court; or

2. May assign, either wholly or in part, the performance of such duties and the exercise of such authority and powers to such judge or judges respectively as he may in his discretion determine.

(B) CONSTITUTION AND FIRST JUDGES

SEC. 27. *First judges of Superior Court.*] The first judges of the Superior Court shall be the Chief Justice, all who may, at the time this Act goes into effect, be the judges of the [here name the courts of general original jurisdiction the jurisdiction whereof is transferred by this act to the Superior Court] and........ additional judges.

The term of the judicial office of each of the judges respectively, except the Chief Justice and the said........ additional judges, shall be the same as it was before the commencement of this Act.

The said .... additional judges shall be selected by appointment of the Chief Justice in the manner and for the term hereinafter provided.

SEC. 28. *Masters of Superior Court.*] There shall be attached to the Superior Court such number of masters, not exceeding ...., as the Judicial Council shall determine. Said masters shall be selected as hereinafter provided. In addition thereto every County Judge and every Associate County Judge shall be ex officio a master of the Superior Court. The said masters shall exercise all or such part of the judicial power of the Superior Court and perform such duties in respect to the business of said court, or of any branch thereof, or of the office of the clerk of the Superior Court, as may be provided for by this Act or by any rules or orders of the Judicial Council hereinafter mentioned.

Sec. 28.

It is presumed that the constitution permits the Judicial Council to exercise the powers above referred to. The court needs judges of the highest ability—judges who can hold the scales of justice true and reach sound conclusions when the subject is violently assailed by partisan advocates. Out of such a crucible emerges real justice and sound law. Unusual talent is required. It is what the highest salary is intended to purchase. It is a rare qualty. Its cost is high. Such judges should devote their entire time to contested matters for which their talents are especially required.

In many branches of practice, however, there is a great deal of time-consuming work which does not require the highest talent. Every lawyer will think of many such matters. The plan for masters is made to

enable the court to avail of the services of competent assistants free from political entanglements, and at the same time avoid evils now inherent in our systems of masters and referees which sometimes result in the real trial being before the master, the judge merely approving. Nowhere in this country have we the system above provided. There should not be a large number of masters, engaged part of their time in practicing law. Their work should be exclusively for the court.

SEC. 29. *Masters not to practice law.*] No master shall take part, directly or indirectly, in the practice of law, except when permitted by an order of the Judicial Council, in which case the salary which shall be paid to the master to whom such permision is given shall be such as is hereinafter provided.

SEC. 30. *Abolition of the present Masters in Chancery.*] The present masters in chancery of the [here name the courts united by this act of which masters are officers] shall continue to hold office until the expiration of their respective terms of office and until that time they shall be additional masters under this act, with the same powers and duties and the same mode of compensation as before the commencement of this act. When and as the terms respectively of each of said masters in chancery shall expire, their said offices shall cease to exist.

SEC. 31. *Qualifications for the office of Master.*] Only citizens of the United States who a. Have been admitted to the bar in any court of the United States or of any State, and b. Practiced law for not less than five years, and c. Resided for not less than one year in the State, shall be eligible to become a master of the Superior Court.

SEC. 32. *Appointment of Masters.*] The Judicial Council hereinafter mentioned shall from time to time determine what number from among all the masters shall be attached regularly to each division of the court.

Masters shall be appointed by the Chief Justice and the Presiding Justice of the division to which each respectively is to be regularly attached.

In case of disagreement the Presiding Justice of one of the other divisions, to be determined by lot, shall be the third member of the selecting committee and shall vote only for the nominee of the Chief Justice or the nominee of the Presiding Justice of the division.

SEC. 33. *Removal of Masters from office.*] Masters may be removed from office for reasons assigned in the order of removal by the Chief Justice with the approval of the Presiding Justice of the division to which the master is regularly attached.

(C) SITTINGS AND DISTRIBUTION OF BUSINESS

SEC. 34. *Terms retained for special purposes—Court may sit at any time and in any place.*] In all cases in which under the law as now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any process is required to be returned, or any act is required to be done in any cause now or hereafter transferred to or pending in the Superior Court, the same may continue to be referred to for the same or like purposes, unless and until provision is otherwise made by any lawful authority or by the Judicial Council.

Subject to rules of the said Judicial Council the Superior Court shall have power to sit and act at any time and in any place within the State for the transaction of any part of the business of such court, or of such judges, or for the discharge of any duty which by act of the legislature or otherwise, is required to be discharge during or after term.

SEC. 35. *Time and place of sittings of Court.*] Sittings of the different divisions of the Superior Court shall be held at such time and at such places as may be provided by the Judicial Council, and the different divisions shall be held as may be determined by the said Judicial Council, and subject thereto all branches of the Superior Court shall be held at the times and places respectively for holding sessions of the [here name the Courts of general original jurisdiction, the jurisdiction whereof by this Act is transferred to the Superior Court] as nearly as may be.

SEC. 36. *Power of Judicial Council to make rules relating to vacations.*] The Judicial Council, with the consent of the Chief Justice, shall have power to make, revoke or modify orders regulating the vacations to be observed by the Superior Court and in the respective offices of said court; and any order of the said Council made pursuant to this section, shall, so long as it continues in force, be of the same effect as if it were contained in this act.

SEC. 37. *Separation of the Court into five territorial divisions.*] For the more convenient dispatch of business (but not so as to prevent any judge from sitting when required in any court or division other than his own) there shall be in said Superior Court five territorial divisions as follows:

1. The *First Division* consisting regularly of .... judges and including the following counties [here name the counties.]
2. The *Second Division,* consisting regularly of....judges and including the following counties [here name the counties.]

3. The *Third Division,* consistng regularly of .... judges and including the following counties [here name the counties.]

4. The *Fourth Division,* consisting regularly of....judges and including the following counties [here name the counties.]

5. The *Fifth Division,* consisting regularly of....judges and including the following counties [here name the counties.]

Sec. 37.

This plan is adapted to nearly all the states. Where there are cities with ten more judges a special organization of the district containing the city may be made according to plans set forth in Bulletin IV-B, the Metropolitan Court act. In smaller states such as Connecticut and New Jersey, a more convenient division of the Superior Court will be on functional lines rather than territorial. A suitable division would give chancery, probate, domestic relations (including juvenile courts) and some other matters to the chancery (or equity) division, and common law and criminal cases to jury division. Or criminal matters might be segregated in a third division; or there might be two divisions, one for civil and one for criminal cases. Such a division would not preclude use of a judge for all kinds of work, especially in smaller communities.

SEC. 38. *Assignment of judges to each of said divisions.*] The regularly constituted places in each of the divisions of the Superior Court shall upon the organization of the Superior Court under this Act, be filled by the Chief Justice from among all the judges of the Superior Court; provided, however, that as nearly as may be each judge shall be asigned to a district which contains all or a part of the district where he served regularly as a judge before the taking effect of this Act.

SEC. 39. *Presiding justices of divisions.*] Each of said divisions of the Superior Court shall have a Presiding Justice who shall be appointed by the Chief Justice from among the judges of the division over which he is to preside.

SEC. 40. *Powers of presiding justices of divisions.*] Such Presiding Justice shall subject to the rules and regulations of the Judicial Council hereinafter mentioned.

1. Have the entire control and management of the calling by the judges sitting in his division of the docket of cases assigned to his division;

2. Superintend the preparation of the calendar of cases for trial in his division; and

3. Make such classification and distribution of the same upon different calenders, to be called by different judges, as he shall deem proper and expedient.

SEC. 41. *Tenure of Presiding Justices of divisions.*] Each Presiding Justice shall hold his office during the period of his judicial tenure.

SEC. 42. *Acting Presiding Justices.*] Upon the occurence of a vacancy in the office of Presiding Justice of any division the judge of the division who shall have been longest a judge of the General Court of Judicature shall become the acting Presiding Justice and shall hold said office till the vacancy shall be filled by the Chief Justice.

In case to or more judges shall have served the same length of time, the acting Presiding Justices shall be selected from them by lot.

SEC. 43. *Tenure of places in divisions.*] The appointees to the regularly constituted places in the several divisions of the Superior Court shall hold such places during the period of their judicial tenure or until they shall have been transferred to a regularly constituted place in another division in the manner herein provided.

SEC. 44. *Filling vacancies in divisions.*] When a vacancy shall occur in one of the regularly constituted places in any division of the Superior Court the same may be filled through assignment by the Chief Justice:

(1) Of any judge newly appointed [or elected] a judge of the Superior Court and not already assigned to any regularly constituted place in any division of the court; or

(2) From among any judges of the Superior Court already occupying regularly constituted places in other divisions; provided, the appointtee consents to such appointment and transfer.

Sec. 40.

Under these powers the presiding justice of a division may employ functional specialization among the judges of his division.

Sec. 44.

The text of this section will depend on the method of selecting judges.

SEC. 45. *Transfer of Judges.*] The Chief Justice shall in his discretion have power to interchange judges, other than Presiding Justices of divisions, from one division to another, so that each will occupy the regularly constituted places in the division formerly occupied by the other; provided always, that the judges so interchanged shall consent thereto.

SEC. 46. *Power of the Chief Justice to make temporary assignments.*] The Chief Justice shall, in his discretion, have power

(1) To make temporary assignments for a period not to exceed six months of any judge of any division, except Presiding Justices, to any other division; and

(2) To require any judge of the Superior Court who shall not for the time being be occupied in the transaction of any business assigned to the division to which he may be regularly attached, to take part in the sittings of any branch or of any division of the Superior Court.

SEC. 47. *Masters, their functions and assignments.*] Masters shall be eligible to sit in any court or to discharge any judicial function; provided, that a lawful authority shall be expressly conferred upon them by the Judicial Council hereinafter mentioned.

Until then the duties of the masters shall be those now required and permitted by law to masters in chancery.

After the appointment of masters as hereinbefore provided and their attachment regularly to a particular division of the Superior Court, they shall be subject to assignment to any other division of the Superior Court, by the Chief Justice in his discretion, with the consent of the Presiding Justice of the division to which said master is regularly attached.

SEC. 48. *Assignment of ex officio Masters.*] Every County Judge and every Associate County Judge, as ex officio master of the Superior Court, shall be subject to assignment by the Chief Justice for such period as he may deem needful, to regular duties as a master in that division of the Superior Court which includes within the district the county where the County Judge or Associate County Judge, as the case may be, regularly discharges his duties as judge; provided, however, that except by the special direction of the Chief Justice or the Presiding Justice of the division of the Superior Court to which any ex officio master is regularly attached, the duties of such ex officio master shall not be discharged outside of the county in which he regularly acts as the County Judge or an Associate County Judge.

SEC. 49. *Assignment of causes by rules of courts.*] All causes and matters which may be commenced in, or which shall be transferred by this Act to the Superior Court, shall be distributed among the several divisions and judges in such manner as may from time to time be determined by any rule of court