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Legislative Research Commission

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The Historical Development of the
Kentucky Courts

By William E. Bivin

I. COURTS OF THE FRONTIER PERIOD

The purpose of this report is to outline the historical evolution of Kentucky’s judicial system. Emphasis is placed upon the provisions of each of Kentucky’s four constitutions, implementing statutes and judicial decisions. These have shaped the various patterns of organizational structure and jurisdiction, determined the methods of selecting and removing judges, and established standards governing judicial qualifications and compensation. These aspects of the judicial system are discussed separately with respect to conditions existing: (1) during the frontier period; (2) after statehood and the 1792 constitution; (3) under the 1799 constitution; (4) under the 1850 constitution; and (5) under the present constitution.

A simple system was adequate to meet the requirements of the early pioneer communities in Kentucky. Crimes were rare because men were bound closely by common danger and possessed very little property of a kind subject to theft. Litigation was unusual since there were few commercial transactions. The most frequent offense was assault and battery, and personal disputes often were settled by wager of battle in a fist-and-skull encounter. For the most part, the military organization maintained civil order in Kentucky’s fortified frontier settlements prior to 1776. In the winter of that year Virginia granted to Kentucky the status of a county, and placed limited powers of civil government in a system of local courts.¹

¹ This article was originally prepared by Mr. Bivin for the Legislative Research Commission. It is published in substantially the same form as Legislative Research Commission Publication No. 63.

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¹¹ Levin, The Lawyers and Lawmakers of Kentucky 8-10 (1897); 1 Collins, History of Kentucky 249-50 (1924); 2 id. 606.
Inferior Trial Courts

The local courts initially provided for Kentucky County were organized into a system consisting of: (1) three Courts of Quarter-Sessions meeting quarter-yearly and having jurisdiction to try misdemeanors and civil cases involving more than twenty-five shillings (The first court ever held in Kentucky met in quarter-session at Harrodsburg in the spring of 1777.); (2) three County Courts meeting monthly to handle business of civil administration other than that expressly given to the Quarter-Session Courts; and (3) special Examining Courts held by individual justices of the peace to inquire into and determine the validity of serious criminal charges. Examining justices could dismiss the charges or hold the accused over for trial with or without bail.2

What this system required by way of the exact number of justices, their tenure, removal, qualifications or compensation is not known. It is known that the Governor of Virginia appointed justices of the peace who were assigned to serve on one court or the other.

General Trial Court

The typical pattern of court organization provided for colonies and frontier territories in other areas of the country during this period included a centralized trial court of general jurisdiction.3 Kentucky County had no such court. Important cases, e.g., those involving capital punishment or title to land, could be tried only in Virginia at Richmond or Williamsburg.4

The need for a general trial court, however, became apparent as soon as settlement grew heavier. The Virginia land law did not provide for a general official rectangular survey of Kentucky into whole, half and quarter sections. Instead, each possessor of a land warrant located it where he pleased and surveyed it at his own expense. Confusion and disputes resulting from the vague and inaccurate descriptions made by hunters and pioneers produced a flood of land-seeking settlers.5 A consequent increase in population led to the elevation of Kentucky County to the status of a district in 1783. At the same time a centralized trial court

2 Ibid.
3 Council of State Governments, Trial Courts of General Jurisdiction in the Forty-Eight States 1 (1951).
4 Supra note 1.
5 1 Collins, op. cit. supra note 1, at 253.
of general jurisdiction was established. The court was styled the Supreme Court for the District of Kentucky, and it had general trial jurisdiction of all criminal and civil cases. Territorially, its jurisdiction was co-extensive with the district.

The court held its first session at Harrodsburg, and seventeen culprits were presented to the grand jury—nine for keeping tipppling-houses and eight for other offenses. A courthouse and jail of hewed or sawed logs nine inches thick was built at Danville.8

Appellate Courts

Virginia did not organize a court with authority to handle appellate work in Kentucky. Litigants in Kentucky County and the District of Kentucky could obtain review of the judgments rendered by local trial courts only by crossing the mountains to the Virginia Court of Appeals.7

II. STATEHOOD—COURTS FROM 1792 TO 1799

The first constitution of the State of Kentucky was adopted and ratified in convention at Danville on April 19, 1792. It provided that the government should commence on June 1 of that year, the effective date of Kentucky’s admission to the federal union. The plan for organization of the government outlined in the constitution established the judiciary as one of three equal departments.

The drafters of Kentucky’s first constitution followed the federal example and made no attempt to spell out in detail a rigid system of courts. Instead, they established a very flexible system by inserting broad language which created:

\[ \ldots \text{one supreme court, which shall be styled the Court of Appeals and \ldots such inferior courts as the Legislature may, from time to time, ordain and establish.} \]

8

The constitution empowered the legislature to outline the detailed pattern of organizational structure, to determine the necessary number and proper allocation of judges, and to define and alter the jurisdiction of the courts. Pursuant to this broad authority, the first session of the legislature passed an act that William

8 Id. at 258.
7 Clark, A History of Kentucky 77 (1950).
Littel called “important as being one of the links by which the legislature have connected the practical jurisprudence of this country with that of Virginia.” The act organized Kentucky's judicial department into a system consisting of the following: (1) two sets of inferior trial courts, the Courts of Quarter-Sessions and County Courts; (2) a criminal court of general jurisdiction, the Court of Oyer and Terminer; and (3) one supreme court, the Court of Appeals.  

**Inferior Trial Courts**

The legislature authorized the appointment of 125 justices of the peace for service on the inferior courts. The appointments were made from each of thirteen counties in accordance with the following statutorily fixed quota: three in Logan; eight in Shelby; nine each in Jefferson, Scott, Washington, and Bourbon; ten each in Mason, Woodford, Madison, Lincoln and Mercer; twelve in Fayette; and sixteen in Nelson.  

The legislature established a Court of Quarter-Sessions in each county, and provided that three of each county's quota of justices serve on this court. Any two of the three justices constituted a quorum. The court held three sessions a year, each lasting six juridical days unless the business before it was finished sooner.

It was a court of record, and succeeded to most of the civil powers, authority and jurisdiction that the Supreme Court for the District of Kentucky had under Virginia law. Court of Quarter-Sessions had jurisdiction to try all civil cases, at common-law and chancery, amounting to more than five pounds “current money” or 1,000 pounds of tobacco, and criminal cases not punishable by loss of life or member. Jurisdiction extended to all cases involving escheats and forfeitures, and it had power to award writs of ne exeat and habeas corpus and injunctions.

Judges of Court of Quarter-Sessions also sat in the capacity of Examining Court to inquire into and determine the validity of criminal charges. Criminal charges could be made under oath before any Quarter-Sessions judge. If in the judge's opinion the charge ought to be examined, he took recognizances of material witnesses, committed the accused to county jail, and issued his

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9 I Littel, The Statute Law of Kentucky 90 (1819) (hereinafter cited as Littel).  
10 Id. ch. 23, § 1.  
11 Id. ch. 23, § 6.
warrant to the sheriff directing him to summon the other justices of Quarter-Sessions to sit as Examining Court within not less than five nor more than ten days.

Examining Court had power to dismiss the charges altogether, to commit the accused person to county jail for trial before the next Quarter-Session, or to the state public jail at Lexington for trial before the Court of Oyer and Terminer. The accused could be released on bail by either the Court of Quarter-Session or the Court of Oyer and Terminer.\textsuperscript{12}

In addition to the Court of Quarter-Sessions, each county had a County Court. Three justices were assigned to County Court, but any two justices constituted a quorum. Each of these courts held a monthly session lasting six juridical days except during the month designated for holding Quarter-Session Court for that county.

County Court succeeded to most of the powers, authority and jurisdiction that it had before statehood. It had cognizance of all civil matters not expressly vested in the Court of Quarter-Sessions, and of cases respecting wills, letters of administration, roads, mills, the appointment and superintendance of guardians, and the admitting of deeds and other writings to record.\textsuperscript{13}

In 1796 the legislature expanded the function of County Court to include various administrative duties. The Court was directed to: (a) superintend public inspections; (b) grant licenses to ordinaries, and regulate and restrain ordinaries and tippling houses; (c) appoint processioners; (d) hear and determine disputes between apprentices and their masters; (e) establish and regulate ferries; (f) provide for the poor; and (g) erect, maintain and repair public buildings, including a common jail and county prison and one pillory, whipping post and stocks. It was authorized to erect a ducking stool.\textsuperscript{14}

Each justice of the peace could hold court individually. Justice's Court had jurisdiction of all civil causes of a value up to five pounds "current money" or 1,000 pounds of tobacco.

Justice's Court judgments in cases of a value up to fifty shillings or 500 pounds of tobacco were final, but in cases of greater value appeal to the next Court of Quarter-Session was a matter of

\textsuperscript{12} Id. ch. 23, § 8.
\textsuperscript{13} Id. ch. 23, §4.
\textsuperscript{14} 1 Litt. 373, ch. 256.
right. On appeal the justice delivered all papers and a copy of his judgment to the clerk of the Court of Quarter-Sessions, where the case was docketed to be heard and determined at the next term "...in a summary way, without pleading in writing according to the right and justice of the case."15

The 1796 legislature passed an act to reduce into one the several acts establishing County Courts and concerning the appointment of justices of the peace and their jurisdiction. The act changed the route of appeals from Quarter-Sessions to the next monthly session of County Court, and reduced the dividing line from fifty to twenty-five shillings.16

General Trial Court - Criminal

The legislature recognized a need for a trial court of general statewide criminal jurisdiction, and provided a Court of Oyer and Terminer to serve the entire state in that capacity. The court was composed of three judges, but any two constituted a quorum. The court held two six-day sessions annually at Lexington, one in April and the other in September.

The Court of Oyer and Terminer succeeded to the criminal powers, authority and jurisdiction of the old Supreme Court for the District of Kentucky. The new court had general criminal jurisdiction co-extensive with the state. It could "... hear and determine all treasons, murders, felonies and other crimes and misdemeanors..." upon presentment by the grand jury, provided that the penalty inflicted by law in the case was more than forty shillings or 400 pounds of tobacco. Judgments of the court were final and not reviewable.17

Appellate Courts

The constitution established the Court of Appeals, and gave it original and final jurisdiction of all cases respecting the titles to land. On the other hand, it specifically authorized the legislature to divest the court of this jurisdiction, and in general terms provided for legislative regulation of the jurisdiction of all courts according to the needs of proper administration of justice.18

The legislature, at its first session, implemented the constitu-

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15 Id. ch. 23, § 2.
16 Id. ch. 256, § 8.
17 Id. ch. 256, §§ 13, 14.
tional grant of original and final trial jurisdiction of land title cases. It directed transfer of all papers belonging to such cases then pending in the Supreme Court for the District of Kentucky to the Clerk of the Court of Appeals for trial by the new court. Also it authorized the Court of Appeals, upon petition of the defendant, to remove land title cases from any inferior court to the Court of Appeals, by issuing writs of certiorari. A single judge could entertain such petitions and direct issuance of the writ. The court, in its discretion, could try the cause, or remand it to the court from which it was removed.

The initial legislative definition of appellate jurisdiction gave the court power to review all final judgments and decrees of the Court of Quarter-Sessions in civil cases amounting to twenty pounds or more, and cases relating to a franchise or freehold, regardless of amount. The statute also gave the court jurisdiction to review all judgments of the old Supreme Court for the District of Kentucky, including appeals brought directly and those then pending in the Court of Appeals of Virginia. An orderly procedure for the transfer of cases was provided.

The court's appellate jurisdiction could be exercised by means of appeal or writ of error. Appeals were prayed in the court below at the time the judgment, sentence or decree was rendered. Writs of error were sued out in the Court of Appeals. Writs of error were issued as a matter of right, except in the criminal cases decided by the Court of Oyer and Terminer. The statute denied review of Oyer and Terminer cases and from its judgments no certiorari, appeal, supersedeas or writ of error was allowed.

In cases of wills, mills and roads, the plaintiff in error was permitted to assign errors upon matters of fact as well as upon matters of law. In all other cases assignment of errors was restricted to matters of law.

General Trial Court - Civil and Criminal

Neither the judicial article of the first constitution nor the initial implementing legislation established a trial court of general state-wide civil jurisdiction. The reason for this is not clear, but

19 J Litt. 101, ch. 24, §§ 13, 23.
20 Id. § 16.
21 Id. §§ 14, 15, 17.
22 Id. §§ 17, 18.
very likely it was thought that the original jurisdiction of the Court of Appeals in land title cases and the broadly defined jurisdiction of the local Quarter-Sessions Courts would be adequate to take care of the civil case docket.

In any event, the legislature, in the preamble to an act of 1795, declared that "...the delays inseparable from the present constitution of the Court of Appeals, is equal to a denial of justice, and the expense occasioned thereby burdensome to suitors." The act reorganized the entire trial court structure. It terminated the original jurisdiction of the Court of Appeals, and abolished the Court of Oyer and Terminer. It replaced them with a system of District Courts of general civil and criminal jurisdiction. The district court system was headed by a General Court.

The act of 1795 created a system of District Courts. It divided the state into six districts, and provided for the appointment of six judges. There was no requirement that each district be represented, and no record has been found to indicate whether or not any particular custom was followed in making appointments. Court was to be held annually in each district, four fifteen-day sessions for the Frankfort district and two in each of the other five.

The act gave the District Court civil jurisdiction,

...over all persons and in all causes, matters and things at common law, or in chancery, arising within their districts, whether brought before them by original process, certiorari, or mandamus, or by any other legal ways and means whatsoever, except of actions of assault and battery, or suits of slander, which shall be cognizable in the Courts of Quarter-Sessions only...

Another limitation restricted trials on original process to matters or things valued at fifty pounds or more, unless against justices of an inferior court.

Land title suits then pending in the Court of Appeals under its original jurisdiction were removable to the District Court for the district in which the land was situated. Either party had a right of removal, and detailed procedures for transfer of papers were established.

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23 1 Litt. 298, ch. 201.
24 Id. § 2.
25 Id. § 8.
26 Ibid.
27 Id. § 22.
District Court was given criminal jurisdiction over "... all treasons, murders, felonies and other crimes and misdemeanors ..." committed within the respective district, "... except breaches of the penal laws."28

However, pending establishment of adequate district jails, the exercise of criminal jurisdiction was restricted to the District Court held at Frankfort. The judges of the Franklin District were directed to set aside the first three days of each session for trial of criminals, and the other District Courts were forbidden to conduct criminal trials. Provision was made for transfer of all prisoners to the public jail at Frankfort for trial.29 This arrangement lasted for only one year. An act of 1796 authorized each District Court to exercise its criminal jurisdiction.30

District Court was vested with appellate jurisdiction to review judgments rendered by the former Supreme Court for the District of Kentucky.31 This, also, was a separate temporary arrangement. The legislature abolished all appellate jurisdiction of District Court in 1796.32

The act that established the District Court also created a central coordinating body. Its apparent purpose was to exercise a unifying influence over the District Courts. All six district judges were required to meet periodically at Frankfort. This meeting was variously described as, "General Session," "General Term," and "General Court."

At first, General Court met only once each year. Two of the six judges were to attend court in each district. Initially, the sole function of the General Court was to allot among themselves the districts in which they, respectively, would serve. In 1796 the legislature required General Court to hold two ten-day sessions annually.33 Under this act district assignments were made twice a year, and General Court was given venue of,

... all causes, suits and motions against public debtors, sheriffs, clerks of superior and inferior courts, and all collectors of public money, and all public debtors of every de-

28 Id. § 10.
29 Id. § 31.
30 I Litt. 477, ch. 263.
31 Id. ch. 201, § 22.
32 Id. ch. 263, § 16.
33 Ibid.
nomination whatsoever, for and in behalf of the Commonwealth.\textsuperscript{34}

In addition, General Court was authorized to decide new or difficult questions of law certified to it by any District Court. A judgment of General Court was entered as the judgment of the certifying District Court.\textsuperscript{35}

An act of 1799 gave the General Court original jurisdiction,

\ldots in all controversies between non-residents, and between non-residents and the citizens of this state, where the matter in dispute shall be above the value of twenty dollars. \textsuperscript{36}

The same act provided for removal of land disputes between citizens from District Court to the General Court by consent and agreement of the parties.\textsuperscript{37}

\textit{Judicial Selection, Tenure, Qualifications, Compensation and Removal}

The constitution required that all judges be appointed by the Governor to serve during good behavior. All judges were removable by impeachment, or by the Governor, for any reasonable grounds not sufficient for impeachment, on the address of two-thirds of each branch of the legislature.\textsuperscript{38}

Neither the constitution nor the implementing statutes prescribed any particular qualifications for judicial office. Moreover, the legislature authorized the Governor in 1795 to fill vacancies on Courts of Quarter-Sessions by appointing any fit person whether or not the appointee was one of the 125 justices of the peace.\textsuperscript{39}

The constitution instructed the legislature to provide an adequate compensation for judicial service and prohibited the reduction of a judge’s salary during his term of office. The legislature implemented this instruction by awarding: (1) each judge of the Court of Appeals an annual salary of $666.66;\textsuperscript{40} (2) each justice of Quarter-Session Court a salary amounting to twelve shillings per day of actual court service;\textsuperscript{41} and (3) District Court

\textsuperscript{34} Id. \textsection 5.
\textsuperscript{35} Id. \textsection 11.
\textsuperscript{36} 2 Litt. 309, ch. 210, \textsection 1.
\textsuperscript{37} Ibid.
\textsuperscript{38} Ky. Const., Art. V, \textsection 2 (1792).
\textsuperscript{39} 1 Litt. ch. 221, at 852.
\textsuperscript{40} 1 Collins, op. cit. supra note 1, at 41.
\textsuperscript{41} 1 Litt. ch. 23, \textsection 12.
judges an annual salary of 150 pounds. County Court justices were compensated under a statutory schedule of fees which they taxed to the bills of costs of the party requesting the service. Judges of the Court of Oyer and Terminer received a salary of $100.42

III. COURTS FROM 1799 TO 1850

The seven years following adoption of the first constitution was a turbulent period in Kentucky history. It was characterized by Indian trouble, foreign intrigue, growing discontent with slavery and public dissatisfaction with a system of government that removed the choice of the Governor and the senators from direct popular control. In 1799 Kentucky took advantage of a provision of the first constitution that contemplated a possible need for early revision, and called a constitutional convention. The delegates assembled at convention to draft Kentucky's second constitution amidst this background of unsettled conditions. The important factions had pledged to work for an independent judiciary.

Nevertheless, it was during the era following adoption of the second constitution that Kentucky's judiciary fell victim to violent forces unleashed by a bitter social, economic and political upheaval. This memorable epoch is commonly known as the "Old Court-New Court Struggle." Because of the role played by the legislature in the "Old Court-New Court Struggle," which dominated this period of the development of Kentucky's judicial department and helped set the stage for agitation for a third constitution, it is necessary to divide the discussion of this period into two phases:

(1) Changes made by the second constitution, and
(2) Changes made by legislation enacted "pursuant" to that document.

CHANGES MADE BY THE SECOND CONSTITUTION

The convention honored the delegates' pledge for independent courts and judges. The judicial article of the new constitution made no dramatic departures from the approach taken by the first constitution. It contained executive appointment of all

42 Id. ch. 27; Id. ch. 201, § 29.
judges and retained tenure for life during good behavior. The new judicial article employed virtually the same broad language as the first one, and created one Court of Appeals. It authorized the legislature to create necessary inferior courts and to supply the details of organization, jurisdiction and operation of all courts in the judicial department.

On the other hand, several minor innovations were incorporated into the second document which gave constitutional status to selected features of earlier legislation. For example, each court in the department was authorized to appoint its own clerk; the Court of Appeals was restricted to appellate jurisdiction only; a County Court was established for each county, and the prohibition against reduction of a judge's salary during his term in office was omitted. Clearly, these changes, except for the one mentioned last, did no violence to the concept of an independent judiciary.

Changes Made by Legislation

Fundamentally, the organization, jurisdiction and operation of the system of local inferior trial courts established by the legislature under the first constitution remained unchanged during the period under the second constitution. The occasional alterations made were minor ones, and will be covered incidentally in the following discussion.

Establishment of Circuit Court

By 1801 the workload of the District Court system had increased to an extent that the system was unable to carry it. Accordingly, the legislature reorganized Kentucky's general trial court structure into a system of Circuit Court districts. This system, like its predecessor, was to be operated under a centralized General Court as the coordinating body. Emphatically, the underlying concept was that the Circuit Court was a single court serving the entire state by sitting in districts.

The legislature abolished the old General Court but created a new one with the same name and functions. The plan authorized appointments from the state-at-large of nine circuit judges

43 Ky. Const., Art IV, §§ 1-12 (1799).
to sit for two fifteen day terms annually at Frankfort as a General Court. The new General Court succeeded to the powers, authority, and jurisdiction that its predecessor had under the District Court arrangement.\textsuperscript{45}

The reorganization established the Circuit Court and directed it to sit in each of nine newly created districts. The General Court assigned each of its members to a district for service as presiding judge of the Circuit Court. Each sat with two assistant judges appointed from that district. Three terms were held annually in each district.

The District Court was abolished as was the Court of Quarter-Sessions in the counties where the Circuit Court would sit. The three-judge Circuit Court succeeded to the powers, authority, and jurisdiction of these courts, and provision was made for transfer of records and papers. Circuit Court had general original trial jurisdiction of all causes, at common law and chancery, criminal and civil, except those of a value less than five pounds in money or 1,000 pounds of tobacco. In addition they had jurisdiction to try de novo appeals from judgments by Justice's Court in cases of a value over five pounds in money or 1,000 pounds of tobacco.\textsuperscript{46}

\textit{Old Court-New Court Struggle}

Sections one and two of the fourth article of the second Constitution read as follows:

Sec. 1. The judicial power of this Commonwealth both as to matters of law and equity, shall be vested in one Supreme Court, which shall be styled the Court of Appeals, and in such inferior courts as the General Assembly may, from time to time, erect and establish.

Sec. 2. The Court of Appeals, except in cases otherwise directed by this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may, from time to time, be prescribed by law.\textsuperscript{47}

Clearly, the intent was to establish the Court of Appeals as a constitutional court at the head of the judicial department which was to be equal with and coordinate to the legislative and execu-

\textsuperscript{45} 3 Litt. ch. 23, at 37; See also ch. 43, 504.
\textsuperscript{46} Ibid.
\textsuperscript{47} Ky. Const., Art. IV, §§ 1, 2 (1799).
tive departments. Today no lawyer would suppose that it could be abolished by any method except a change in the constitution itself. However, the legislature attempted to abolish that tribunal in 1824.

The decade from 1819 to 1829 was a period of panics, too many state banks, an excess of paper money and creditor-defrauding. In 1818 the legislature chartered forty-six semi-independent branch banks and authorized them to issue $26,000,000 in paper money. By mid-summer of 1819, business houses and United States branch banks would not accept this currency. Kentucky debtors were near ruination, and clamoring for relief. Early in 1820 the legislature passed a replevin act, which permitted debtors to endorse their notes with the words "Notes of the Bank of Kentucky or its branches will be accepted in discharge of this execution." If the creditor-plaintiff refused to accept this endorsement, the defendant-debtor could replevy the debt for two years. In 1822, Judge James Clark of the Bourbon Circuit Court held the act unconstitutional in the case of Williams v. Blair, and the Court of Appeals affirmed the decision.

The United States Supreme Court had enunciated the doctrine of judicial review of legislation in the case of Marbury v. Madison decided more than twenty years earlier. Many Kentuckians were not yet convinced that this was sound doctrine. The majority of the next session of the legislature favored the relief measure, and denounced the judges as usurpers, tyrants, and kings. An attempt to remove the incumbents failed for lack of a two-thirds majority, but at the 1824 session the dominant party passed an act entitled "An Act to reorganize the Court of Appeals." In effect it purported to abolish the constitutional "old court" and substitute a legislative "new court."

The Governor signed the measure and appointed judges who sympathized with the relief laws. The "old court" refused to recognize the validity of the act, and for two years both the "old court" and the "new court" held sessions. Some litigants appealed to one court and some to the other. Some circuit judges recog-

48 Information in this section is taken from: Stickles, The Critical Court Struggle in Kentucky 1819-29; Wilson, "The Old Court and New Court Controversy in Kentucky," Proceedings Kentucky State Bar Association 54 (1915).
nized one and some the other as the true court, while several alternately recognized both.

The voters settled the crisis by electing a legislature which, in 1826, repealed the "act to reorganize the Court of Appeals" by passing "... An Act to remove the unconstitutional obstructions which have been thrown in the way of the Court of Appeals." The "new court" vanished and the "old court," redeemed and reinstated, resumed its accustomed duties.

The "old court" won the immediate struggle. Nevertheless, the public continued to be dissatisfied with a system that appointed for life judges with power to decide that a popular legislative measure was null and void under the constitution. This popular dissatisfaction was one of the principal reasons for calling a constitutional convention in 1850.

IV. COURTS FROM 1850 TO 1892

Governmental reform was uppermost in the popular mind by the time the 1850 constitutional convention met. Memories of the "Old Court-New Court Struggle" of the 1820's were fresh and bitter, and there was considerable agitation to place the selection of judges under the direct control of the popular majority vote.49

The judicial article of the third constitution dealt more with the details of court organizations than its two predecessors, which had left such matters, for the most part, to the legislature. The general provisions of the new article vested the judicial power in one supreme court (the Court of Appeals), courts established by the constitution, and such courts inferior to the supreme court as the General Assembly might erect and establish.50

Specific provisions of the article and implementing legislation established in each county a set of trial courts of limited jurisdiction consisting of a County Court, a fiscal court called Court of Claims, a Quarterly Court and several Justices' Courts. Each county also had a trial court of general jurisdiction called the Circuit Court. Appellate jurisdiction was vested in the Court of Appeals until 1882 when the legislature created the Superior Court as an intermediate court to assist the Court of Appeals.

50 Ky. Const., Art. IV, § 1 (1850).
Specific provisions of the judicial article established a County Court in each county. County Courts were organized to consist of one presiding judge and two associate judges, with any two constituting a quorum. The office of presiding judge was given constitutional status, but the legislature was authorized to abolish the office of associate judge at any time.\(^51\)

The legislature vested the County Court with appellate jurisdiction of cases decided by Justices' Court that involved a value between $4.00 and $16.00. For the most part, however, County Court functioned as the legislative and administrative authority of the county. It had the power to lay and collect taxes and maintain buildings, and to superintend and control the fiscal affairs and property of the county. The exact procedure used in exercising these powers is not clear, but apparently they were exercised by the court when it sat in October as a Court of Claims.\(^52\)

The new judicial article instructed the legislature to divide each county into an unspecified number of justices of the peace districts, and provided for the election of two justices from each district.\(^53\)

The legislature authorized justices to hold separate courts on order of the county judge. Justices' Court had examining jurisdiction in criminal cases, and trial jurisdiction of misdemeanors punishable by a fine not exceeding $16.00. They had jurisdiction of all civil cases up to a value of $16.00 and of contract cases up to a value of $50.00. Justices' Court also had equity jurisdiction, concurrent with that of Circuit and Quarterly Court, to issue writs of attachment on judgment debts up to $50.00 where execution was returned \textit{nulla bona}.\(^54\)

Section 37 of the article provided that,

\begin{quote}
The General Assembly may provide, by law, that the justice of the peace in each county shall sit at the Court of Claims, and assist in laying the county levy and making appropriations only.\(^55\) [Emphasis added.]
\end{quote}

\(^{51}\) Id. \S 29.
\(^{52}\) Wickliffe, Turner & Nicholas, Revised Statute of Kentucky 234 (1852).
\(^{53}\) Ky. Const., Art. IV, \S 34 (1850).
\(^{54}\) Wickliffe, Turner & Nicholas, supra note 52 at 238-39.
\(^{55}\) Ky. Const., Art. IV, \S 37 (1850).
The legislature provided that a Court of Claims be held in each county in October of each year. The court consisted of a majority of the county's justices of the peace, and met at the call of the county judge, who presided. Justices of the peace were authorized to participate only when the court was engaged in laying the county levy, and appropriating money.\textsuperscript{56}

The legislature organized a Quarterly Court in each county to be conducted by the county judge. It replaced the old Court of Quarter-Sessions, which had been abolished upon creation of the Circuit Court. Its jurisdiction was concurrent with Justices' Court in all civil cases, and with Circuit Court in cases amounting to less than $100.00, except those involving title to real estate.\textsuperscript{57}

\textit{Trial Courts of General Jurisdiction}

The General Court was abandoned. The only feature retained was its jurisdiction of Commonwealth cases. Section 6 of Article 8 of the constitution authorized the legislature to direct "... in what manner, and in what courts, suits may be brought against the Commonwealth." The legislature gave the Circuit Court of Franklin County jurisdiction in behalf of the Commonwealth, of all cases, suits and motions against clerks of courts, collectors of public money, and all public debtors or defaulters of any denomination, and others claiming under them; and for this purpose its jurisdiction shall be co-extensive with the state.\textsuperscript{58}

There was no specific provision for any alternative method of centralized coordination. There ceased to be a trial court for an entire state. Instead, a multiplicity of uncoordinated semi-autonomous trial courts was substituted for the state-wide court concept. Each court acted and lived practically regardless of the existence of the others. Instead of a trial bench, Kentucky was to have a number of judges, many of whom would never see each other. This situation was to prevail until organization of the Judicial Conference and the Judicial Council in 1950.

The judicial article instructed the legislature to divide the state into twelve circuit districts, each to consist of a number of coun-

\textsuperscript{56} Wickliffe, Turner & Nicholas, supra note 52 at 234-35.
\textsuperscript{57} Id. at 232.
\textsuperscript{58} Id. at 231.
ties grouped together. A Circuit Court was established in each county then existing or thereafter created, and the circuit judge held court in each county of the district from which he was elected.

The legislature vested the Circuit Court with original trial jurisdiction of all matters, in law and equity, not specifically delegated to other courts, and appellate jurisdiction of specified cases decided by County, Quarterly and Justices' Courts.

One district could be added each four years, but the total number was limited to sixteen until the state's population should exceed 1,500,000. Except for creation of new districts, changes in the districts could be made only at the first session of the General Assembly after a census.59

Appellate Courts

The general provisions of the judicial article established one supreme court to be styled the Court of Appeals. Specific sections provided for the court to consist of four judges to be elected from districts to be drawn by the legislature, which in turn was authorized to reduce the number of judges and districts to a minimum of three.

The judicial article limited the court to appellate jurisdiction only, and required it to hold sessions at the seat of government. However, the legislature was authorized to define the details of its appellate jurisdiction. Also the legislature could direct the court to hold sessions in any one or more of the appellate districts, but there is no indication that it ever did so.

The legislature vested the Court of Appeals with jurisdiction to review directly all judgments amounting to $100.00 or more. However, cases appealable from inferior courts to Circuit Court were excepted from the court's review jurisdiction. Felony cases were also excepted until the Criminal Code of 1854 permitted a convicted felon to appeal.60

The general provision of the judicial article authorized the legislature to create courts inferior to the Court of Appeals. By 1882 the Court of Appeals had over 1,300 cases pending on its docket, and the legislature created an intermediate court, the

59 Ky. Const., Art. IV, §§ 16-28 (1850); Wickliffe, Turner & Nicholas, supra note 52 at 218-30.
60 Ky. Const., Art. IV, §§ 2-15 (1850); Wickliffe, Turner & Nicholas, supra note 52 at 214-18.
Superior Court, to assist in handling the workload. For thirty-two years trial work had been conducted by the autonomous Circuit Courts without any unifying influence such as that provided by the old General Court. This condition tended to promote lack of uniformity in decisions at the trial level, which, in turn, stimulated an increased number of appeals. The Superior Court consisted of three judges, and it had jurisdiction of all appeals except those involving the validity of statutes; title to a freehold or right to a franchise; felonies; or judgments for money or property in cases where the amount involved was greater than $3,000, exclusive of interest and costs.

A limited double appeal to the Court of Appeals was available since the Court of Appeals has appellate jurisdiction of all final orders and judgments of the Superior Court except: (a) where the amount of fine or value in controversy was less than $1,000, exclusive of interest and costs; or (b) where a judgment of the trial court was affirmed by the Superior Court without dissent.

Moreover, two judges of the Superior Court could certify to the Court of Appeals any case falling within these two categories if in their opinion the case involved a novel question. However, in actual operation the judges would not use this valuable tool. No cases were certified on the basis of novelty or importance of the question. Supporters of the intermediate court attempted to offset criticisms by proposing to give the Court of Appeals authority to make the determination as to the novelty or importance of questions.61

Judicial Selection, Tenure, Qualifications, Compensation and Removal

For fifty years the Governor had had the power to appoint most public officials for life tenure. Abuses and resentment were commonplace. Jacksonian democracy took root and dominated opinion at the time of the 1850 convention. The third constitution swung to the other extreme, and made all public offices except two elective.

The courts came in for a full share of criticism. There was a public reaction against the doctrine under which judges ap-

61 Legislative Research Commission, Intermediate Courts (Informational Bulletin No. 12.).
pointed for life had power to invalidate popular legislation. The judicial article reflected the then current opinion by abandoning executive appointment of judges. All judges were to be chosen by popular vote.

The reduction of tenure from life during good behavior to a term of years was a corollary feature of the elective method of selection, and judges' tenure in office was made dependent upon their ability to secure election for terms of years: judges of the Court of Appeals, eight years; judges of Circuit Courts, six years; judges of County Courts, four years, and justices of the peace, four years.62

The judicial article imposed several minimum qualifications as a prerequisite to eligibility for judicial office. A candidate for the Court of Appeals or a Circuit Court was required to be a citizen of the United States, a resident of his district for two years next preceding his election, at least thirty years of age, and a practicing lawyer for eight years.63 A candidate for the office of presiding judge or associate judge of a County Court was required to be a citizen of the United States, over twenty-one years of age, and a resident of the county for one year next preceding his election. He was not required to be trained in the legal profession.64

The judicial article directed the legislature to provide an adequate compensation for judicial services. It required that salaries of circuit judges be made equal and uniform throughout the state, and prohibited any reduction of the salaries of circuit and appellate judges during an incumbent's term.65

Judges of the Court of Appeals and Circuit Courts were removable by impeachment for any misdemeanor in office, or by the Governor on the address of two-thirds of each House of the General Assembly for any reasonable cause.66 Judges of County Courts and justices of the peace were removable upon conviction for malfeasance or misfeasance in office, or for willful neglect of official duties, subject to appeal of the Court of Appeals.67 Judges, except those of the Court of Appeals, were required to

63 Id. §§ 8, 22.
64 Id. § 32.
65 Id. §§ 2, 25.
66 Id. §§ 3, 23.
67 Id. § 36.
vacate their offices when they moved out of the district from which elected. 68

Clerks of Courts

Under the new article a Clerk for the Court of Appeals was elected from the state-at-large, and clerks for Circuit and County Courts were elected from each county. The article also provided for the election of a Clerk for the Court of Appeals from each appellate district in which the legislature directed the court to hold sessions, if any. 69

To qualify for Clerk of the Court of Appeals the candidate was required to be twenty-one years of age, a citizen of the United States, a resident of Kentucky for two years next preceding his election, and to present a certificate of qualification endorsed by a judge either of the Court of Appeals or of a Circuit Court after examination by the clerk of that judge's court. 70 Clerks of Circuit and County Courts had to be twenty-one years of age, and have a similar certificate of qualifications. 71

Clerks of all courts were removable by the Court of Appeals upon information and good cause shown, provided that two-thirds of the members present concurred. 72

V. COURTS FROM 1892 TO 1958

The convention which wrote the present constitution was in session from September 8, 1890 to September 28, 1891. The delegates were sharply divided on such strong partisan issues as the slavery clause; the secret ballot, corporate regulation, and court organization and operation. Four large volumes containing 6,500 pages were required to publish the debates.

The judicial article of the present constitution outlines in detail the establishment and organization of Kentucky's Judicial Department. It establishes, in each county, a set of minor courts consisting of three to eight Justice's Courts, a County Court, a Fiscal Court, a Quarterly Court, and city Police Courts. In addition, each county has a trial court of general jurisdiction, the Circuit Court. One supreme court of general appellate jurisdic-

68 Id. § 85.
69 Id. § 11.
70 Id. § 12.
71 Id. Art. VI. §§ 1-3.
72 Id. Art. IV, § 39.
tion, the Court of Appeals, serves the entire state. The creation of any other court is expressly prohibited.

**Trial Courts of Limited Jurisdiction**

The present judicial article directs the legislature to divide each county into from three to eight magisterial districts and authorizes the election of one justice of the peace from each district.\(^7\)

Each justice may hold separate court with county-wide jurisdiction: (a) concurrent with Circuit and Quarterly Courts of civil actions involving an amount up to $200.00; (b) exclusive of Circuit and concurrent with Quarterly Courts of civil actions involving an amount up to $50.00.

Their jurisdiction is concurrent with County and Quarterly Courts in penal and misdemeanor cases in which the maximum punishment is a $20.00 fine, and concurrent with Circuit Court in such cases if the maximum punishment is a $500.00 fine or twelve months imprisonment or both.\(^7\)

An act of 1958 authorizes fiscal courts to provide for their compensation by salary, as follows: $1,200 in counties with a population of 30,000 or less; $2,400 for counties with a population of 30,000 to 60,000; and $3,600 for counties with a population of 60,000 to 250,000.\(^7\)

Each county has a County Court, which meets monthly with the county judge presiding. It has exclusive jurisdiction of probate matters, administration of estates, and juvenile cases. It also has jurisdiction concurrent with Quarterly and Justice's Courts of penal and misdemeanor cases in which the maximum punishment is a $20.00 fine, and concurrent with Quarterly, Justice's and Circuit Courts of cases in which the maximum punishment is a $500.00 fine or twelve months imprisonment, or both.\(^7\)

Each county also has a Quarterly Court. The county judge

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\(^7\) Ky. Const. § 142.


\(^7\) KRS § 64.255.

\(^7\) KRS § 25.010.
presides and has jurisdiction: (a) concurrent with Justice's and Police Courts of civil cases (except Police Courts in first, second and third class cities, which have no civil jurisdiction) involving an amount up to $200.00; (b) concurrent with Circuit Court of civil cases involving more than $50.00 but no more than $300.00. Its penal and misdemeanor jurisdiction extends concurrently with County and Justice's Courts, to all cases in which the maximum punishment is a $20.00 fine, and concurrently with County, Justice's and Circuit Courts to cases in which the maximum punishment is $500.00 or twelve months imprisonment.  

Each county has a Fiscal Court, which consists of the county judge presiding over the justices or alternatively the county commissioners. This body exercises legislative and administrative powers, and, functionally, is not a part of the Judicial Department.

The constitution authorizes a city Police Court for each city or town and defines its jurisdiction according to class of city. Police Courts in the first three classes have no civil jurisdiction, but Police Courts in the fourth and fifth classes and in towns exceeding 250 persons in the sixth class have the same civil jurisdiction as justices of the peace. In all classes they have: (a) exclusive jurisdiction of ordinance violations; (b) jurisdiction, exclusive of Circuit Court, of penal and misdemeanor cases in which the maximum punishment is a $20.00 fine; and (c) jurisdiction, concurrent with Circuit Court, of penal and misdemeanor cases in which the maximum punishment is a $500.00 fine or twelve months imprisonment. Police Courts in all classes have exclusive examining jurisdiction of all public offenses committed within the city limits, except that only first class city Police Courts can examine in homicide cases.

**Trial Court of General Jurisdiction**

The constitution establishes a Circuit Court in each county. The legislature has divided the state into forty-six circuit court districts. Twelve districts contain a single county and the rest from three to six counties. Terms of Circuit Courts are regulated by statute.

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78 Ibid.
79 Ky. Const. § 144.
80 Id. § 143; KRS §§ 26.010, 26.020, 26.030.
The Circuit Court has original jurisdiction of all matters, both in law and equity, over which jurisdiction is not vested exclusively in some other tribunal, and of all cases in which title to land is in question, or in which a provisional remedy is sought for enforcement of a lien upon land for the payment of debt.

Circuit Court has appellate jurisdiction to try de novo: (1) all orders and judgments of the Fiscal Court and Quarterly Court over $25.00 in value; (2) all judgments of the County Court over $50.00 in value, and (3) all orders of the County Court in the administration of estates.

**Appellate Courts**

The framers of the present constitution believed that a single appellate court was better suited to the needs of the state. They decided that a single court composed of seven judges and sitting in two divisions could dispose of as many cases as a four judge court of last resort and a three judge intermediate appellate court. Accordingly, the constitution abolished the Superior Court and established one supreme court. Advocates of the single court arrangement clinched their victory over the proponents of the intermediate court by inserting a provision that prohibits the creation of any courts not established by the constitution.

The constitution established one supreme court, the Court of Appeals, to consist of not less than five nor more than seven judges. It required the court to meet at Frankfort, but authorized it to divide itself into sections for the transaction of business. Within limits set by the constitution, the legislature fixes the number of judges, defines the details of the court's appellate jurisdiction, and sets the geographical boundaries of the districts.

In 1895 the legislature increased the number of judges on the Court of Appeals from four to seven, and the court began to operate under the two division method. In 1906 one commissioner was employed. Three more were added in 1924, but the offices of all four were to terminate in 1928. In 1928 the terms were extended for two more years. The present law, enacted in 1930, authorizes four without specifying a termination date.

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81 Ky. Const. §§ 126-128; KRS §§ 23.010, 23.030, 23.040.
82 Levin, op. cit. supra note 1 at 134; Legislative Research Commission, op. cit. supra note 61; Debates, Constitutional Convention of 1890, Vol. II & III, 2994-3168.
83 Ky. Const. §§ 109, 111, 113, 118.
In defining the details of the court's jurisdiction the legislature granted it power to review all final orders and judgments, but then qualified the grant by making specific exceptions and imposing monetary limits.

Initially, the court had jurisdiction to review the final orders and judgments of all courts except those: (1) granting a divorce or punishing a contempt, (2) of a Quarterly, Police, Fiscal or Justice's Court, (3) of County Court unless the action was for division of land and allotment of dower, and (4) bonds having the force of judgments. A monetary limitation precluded appeals in cases involving the recovery of money or personal property amounting to less than $100. Three years later the $100 minimum amount was raised to $200. In 1914 it was raised to $500, but pray appeals were provided in cases involving as much as $200 and less than $500. The court should grant the prayer if justice required a reversal or if a question in issue demanded the construction of a statute or a section of the constitution. Appeal as a matter of right in land cases was restricted to those directly involving the title to land, the right to an easement therein, or the right to enforce a statutory lien thereon.

Today, the court operates under similar statutes, which grant it power to review all final orders and judgments of circuit courts in civil cases, subject to the same list of exceptions. The minimum monetary limit on appealable cases is $200. Appeals as a matter of right are available only in cases involving $2,500 or more, unless otherwise provided by a special statute. Pray appeals are permitted in cases involving as much as $200, and less than $2,500. An act of 1958 authorizes the Court of Appeals to govern, by rule, the form of application and procedure for appeals when the amount is $200 and under $2,500.

*Judicial Selection, Tenure, Qualifications, Compensation and Removal*

The constitution requires that judges of all courts be elected from their respective districts by popular vote. Commissioners of the Court of Appeals are appointed by and serve at the pleasure of the court.

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84 Ehlen, "An Intolerable Burden," 40 Ky. L. J. 78 (1951-52), and authorities cited therein.
87 KRS § 21.150.
Judicial tenure depends upon the individual judge's ability to secure election for terms of years: judges of the Court of Appeals, eight years; judges of Circuit Courts, six years; judges of County Courts, four years; and justices of the peace, four years; and judges of Police Courts, four years.  

The constitution requires several minimum qualifications for judicial office. A candidate for judge of the Court of Appeals or of a Circuit Court must be a Kentucky citizen with residence in the district in which he is a candidate for two years next preceding his election, thirty-five years or more old, and a practicing lawyer for eight years. Commissioners of the Court of Appeals must have identical qualifications. A candidate for county judge or justice of the peace must be a Kentucky citizen with residence in the state for two years next preceding his election and in his county or district for one year. He need not be trained in the legal profession.

The constitution, as originally adopted, fixed the maximum salary of state officials at $5,000. This has been amended and judges of the Court of Appeals now receive $12,000 per annum and commissioners receive $10,800. Until 1958 judges of Circuit Courts received $7,500 from the state. This could be augmented by one or more counties in his district so long as the total compensation did not exceed $8,400. An act of 1958, upheld by the Court of Appeals, provided that the entire $8,400 must be paid by the state.

County judges are compensated by salaries fixed by the Fiscal Court and, in civil cases by fees under a statutory schedule. Justices of the peace in counties with 250,000 population receive a salary of $4,000 payable out of the county treasury. In other counties Fiscal Courts may provide salaries for justices of the peace.

Any circuit judge who is sixty years of age, and has served for ten years as a regular judge, and has contributed to the special circuit judge fund for at least two years may retire and be ap-

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89 Id. §§ 114, 130.
90 KRS § 21.150.
91 Ky. Const. § 100.
92 Id. §§ 112, 193, 246; KRS §§ 64.490, 64.496, 64.500.
93 KRS § 64.230, 64.240, 64.530.
94 KRS § 64.250.
95 KRS § 64.255.
pointed as a special circuit judge. Special circuit judges receive $3,500 annual salary, plus $150 for each year of regular judicial service in excess of ten years but not exceeding twenty years. In addition he is paid expenses, exclusive of per diem expenses, in the same manner as other special judges. As more circuit judges become eligible for retirement the often expressed desire of many attorneys that a judge rather than an attorney sit as special judge can be satisfied more fully.

A judge or commissioner of the Court of Appeals with more than eight years continuous service may retire, and the court may appoint him as an additional commissioner. The appointment is upon the same terms and conditions as apply to the four regular commissioners.

Judges of the Court of Appeals and Circuit Courts may be removed by impeachment, or by the Governor on the address of two-thirds of each House of the General Assembly for any reasonable cause. Commissioners of the Court of Appeals may be removed or replaced by order of the court at its pleasure.

Judges of County Courts and justices of the peace may be removed by impeachment, or by conviction for malfeasance or neglect in office. These offices are also vacated when an incumbent moves out of his county or district.

V. SUMMARY

Before statehood our courts consisted of a mere extension of the Virginia system. Since statehood several major reorganizations have been made under four constitutions and numerous implementing statutes. Experimentation without a carefully considered plan is characteristic of most of the reorganizations. The evident trend has been toward increased restrictions on legislative action.

The makers of the first constitution followed the federal example. The main feature of the judicial provisions was flexibility. Only the Court of Appeals had constitutional status. The legisla-
tured had power to provide for additional courts and to define the
details of organization and jurisdiction. It was a grant of power
without an indigenous plan to follow in exercising it. Neither the
framers of the constitution nor the legislators devised a state
wide plan based on a study of the particular needs in Kentucky.
Instead, we turned to Virginia for a plan, and patterned our
court system after the one then existing in the parent-common-
wealth. Our first system consisted of local trial courts of limited
jurisdiction in each county, a central court with state wide crimi-
nal jurisdiction, and a supreme court with general appellate
jurisdiction of civil cases and trial jurisdiction of land title dis-
putes.

The basic structure of this system lasted only three years.
The 1795 legislature began to experiment. It abolished the central
criminal court and the trial jurisdiction of the supreme court, and
completely reorganized the arrangement for trial of cases.

The new arrangement provided, for the first time, a state wide
trial court system. The basic idea was to establish a trial bench
to serve the entire state by sitting in districts. The trial judges
also sat en banc at Frankfort as a coordinating body to give a
unifying influence to their work in the districts.

The 1799 constitution retained the feature of flexibility, ex-
cept that it required a county court for each county. The legisla-
ture did not disturb the 1795 trial court arrangement during the
period under the second constitution, except by changing the
nomenclature from district to circuit. During this same period the
legislature exercised its discretion with a vengeance. In a bold
experiment, it attempted to abolish the Court of Appeals estab-
lished by the constitution and substitute an appellate court of
its own design and opinion. A struggle between the two tribunals
for recognition lasted for two years. The new court adherents lost
control of the legislature in 1826, and the immediate controversy
was settled in favor of the constitutional court, but the stage was
already set for a third constitution.

The judicial article of the 1850 constitution was more re-
strictive. Flexibility was on its way out. Constitutional status was
given to County Courts, Circuit Courts, and the Court of Appeals.
The legislature still had authority to create other courts, and to
define the details of organization and jurisdiction of all courts. During the period under the third constitution the legislature made three major innovations, one at each level.

On the local level, it created a Court of Claims in each County. Its functions were mainly legislative and administrative in nature. It was the forerunner of our present Fiscal Court.

At the general trial court level, the state wide concept was abandoned immediately after adoption of the constitution. Jacksonian democracy was in the saddle, aided by bitter memories of the “Old Court-New Court Struggle.” The method of selecting judges was changed from executive appointment for life to popular election for a term of years. As an elected official the circuit judge was responsible only to the electorate of his district. For the time being there ceased to be an unifying influence over the work of the trial courts. Each circuit had its own autonomous court.

At the appellate level, the legislature created an intermediate court of appeals thirty-two years after abandonment of the centrally coordinated trial court arrangement. Its stated purpose was to assist in handling an increasingly burdensome appellate workload. The fact that cases were being tried by many autonomous courts without the unifying influence of a General Court must have contributed substantially to the increased number of appeals.

The Superior Court was the object of severe criticism, and was abolished by the 1892 constitution. Among other things it had utterly failed to use its authority to certify novel and important questions to the Court of Appeals. Its supporters tried to save it by giving the Court of Appeals authority to determine the novelty and importance of questions. Opponents of the Superior Court carried the day, and clinched their victory by inserting a prohibition against the creation of any court not established by the constitution. These are our present County Courts, Quarterly Courts, Police Courts, Justice’s Courts, Circuit Courts and the Court of Appeals. It is noteworthy that the present Court of Appeals consists of the same number of judges as the combined membership of the Court of Appeals and the Supreme Court under the 1850 constitution.

If the flexible language of the early judicial articles amounted
to a grant of power to the legislature without a plan to follow in exercising it, the opposite is true of the present judicial article. Its inflexible language presents a detailed plan without any legislative discretion to implement it.