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History of Courts of Appeal in Louisiana*

John T. Hood, Jr.**

Intermediate appellate courts, known as courts of appeal, were established in Louisiana in 1879, more than eighty years ago. During that eighty-year period a number of changes in the organization and jurisdiction of these courts have been brought about by the adoption of three new constitutions, by amendments to those constitutions, and by legislative acts. The inaugurating today of an extensively revised plan of appellate jurisdiction in Louisiana is an occasion which in many respects equals or exceeds in importance the changes which were made in 1879. The pages of history which are being written unquestionably will record this event as marking the most significant step which Louisiana has taken toward developing one of the finest judicial systems in existence. The inauguration of this major change in appellate jurisdiction, including the creation of a new court, makes it appropriate to review the history of courts of appeal in Louisiana.

Prior to 1879 there were no intermediate appellate courts in this state. For approximately one year after the Louisiana Territory was acquired by the United States in 1803 Governor Claiborne, being vested with almost dictatorial powers, served as the court of last resort in the territory for all matters, both civil and criminal.¹ On March 26, 1804, the Superior Court for the Territory of Orleans, consisting of three judges, was created. This court convened initially on November 5, 1804, and it replaced Claiborne as the supreme judicial authority.²

When Louisiana was admitted into the Union in 1812, the Louisiana Supreme Court was established as the highest and only appellate court in the state, its jurisdiction being limited, however, to appeals in civil cases.³ About thirty years later a

*Presented at ceremonies incidental to inauguration of Plan for Revision of Appellate Jurisdiction in Louisiana, held in Lake Charles on July 1, 1960.

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1. Dart, *The History of the Louisiana Supreme Court*, reprinted in 133 La. Rep. xxxi-xxxiii (1913); Magee, *History of the Courts of Louisiana*, 33 LAW LIB. J. 254-255 (1940).

2. Magee, *History of the Courts of Louisiana*, 33 LAW LIB. J. 254, 255-57 (1940); MILLER, *THE LOUISIANA JUDICIARY* 8-11 (1932).

3. La. Const. art. 4 (1812).

new court, known as the Court of Errors and Appeals in Criminal Matters, was created to consider and determine appeals in criminal matters.⁴ This court held sessions from July 1843 to February 1846, but it was abolished with the adoption of the Constitution of 1845, which gave the Supreme Court appellate jurisdiction in criminal as well as in civil cases.⁵

Most of the established courts in Louisiana, other than those which may have existed under the Confederacy, ceased to function after the capture of New Orleans in April 1862.⁶ A quorum of Justices for the Louisiana Supreme Court was appointed by the Military Governor, General G. F. Shepley, in April 1863, but this court apparently never met or acted.⁷ From April 1862 until May 1, 1865, therefore, the courts of last resort in Louisiana were military courts and federal courts. At first the Army created a Provost Court, presided over by Major Joseph M. Bell, with authority to render final judgments.⁸ On October 20, 1862, President Lincoln, by executive order, established a Provisional Court of Louisiana which served as the court of last resort in the state from that time until the fall of 1864 when the federal courts resumed their sessions.⁹

The Constitution of 1864 created a Supreme Court of five Justices to be appointed by the governor.¹⁰ The members of that court were appointed on April 3, 1865, and they met initially on May 1, 1865.¹¹ They and their successors served through the

4. La. Acts 1843, No. 93.

5. Magee, *History of the Courts of Louisiana*, 33 LAW LIB. J. 254 (1940). Decisions of the Court of Errors and Appeals in Criminal Matters are reported in 8 Rob. 513-619 (La. 1847). The judges who served this court were Thomas C. Nicholls, George Rogers King, Isaac Johnson, with William D. Boyle temporarily in February 1846.

6. The Supreme Court met on Monday, February 24, 1862, and entered an order reciting that at a meeting of the judges of the Supreme Court and of the district judges of Orleans Parish, it had been agreed that all courts should adjourn to facilitate the mobilization of the militia which had been ordered by the legislature. Accordingly, the court adjourned to Monday, May 5, 1862. On that date, all the judges being absent, the clerk adjourned the court until Tuesday, May 6, 1862, but since all judges also were absent on that date, the clerk adjourned the court *sine die*.

7. Those appointed were Charles A. Peabody, Chief Justice; John S. Whitaker; and J. G. Cole.

8. Dart, *The History of the Louisiana Supreme Court*, 133 La. Rep. xlvi (1913); MILLER, *THE LOUISIANA JUDICIARY* 35 (1932).

9. Charles A. Peabody, of New York, was appointed as judge of the Provisional Court of Louisiana. He arrived in December 1862, bringing with him his clerk, marshal and prosecuting attorney, and the court was immediately put into operation. It was abolished by Congress on July 28, 1866.

10. La. Const. tit. V (1864).

11. Dart, *The History of the Louisiana Supreme Court*, 133 La. Rep. xxxi (1913).

reconstruction period. One of the first acts of Francis T. Nicholls, after his election as Governor and the termination of "carpetbag" rule in 1876, was the appointment of a full bench to the Supreme Court.¹² This court, with the assistance of state police, wrested possession of the supreme court building from the S. B. Packard-appointed court, and assumed office on January 9, 1877.¹³ Continuously since that time the Supreme Court, composed of the Justices appointed by Governor Nicholls and their successors in office, has been the highest court in the state.

Courts of appeal were created by the Constitution of 1879 in order to relieve the congested docket of the Supreme Court.¹⁴ The Clerk of the Supreme Court submitted a report to the constitutional convention which convened that year showing the number of appeals then pending in that court, the years in which those appeals were brought, and the number of cases which had been determined by the Supreme Court since the installation of the Nicholls government in 1876.¹⁵ Efforts to obtain a copy of this report have been unsuccessful, but it apparently convinced the delegates that the Supreme Court should be relieved of some of its work load. There is no doubt that the Supreme Court was overburdened with appeals at that time, because for eleven years prior thereto all civil cases where the amount in dispute exceeded \$500.00 were appealable to the Supreme Court, and prior to 1868 this jurisdictional amount was only \$300.00. These low jurisdictional amounts made it possible for many relatively small cases to be appealed to the Supreme Court, and consequently the docket of that court became overcrowded.

At the 1879 constitutional convention a "Committee on the Judiciary" was appointed, consisting of twenty members with T. T. Land, of Caddo Parish, as its chairman. This committee submitted to the convention a report which included a recommendation that intermediate appellate courts be created to assume a part of the work load of the Supreme Court.¹⁶ This report was considered article by article, and was debated for several days. Although the report was amended in many par-

12. The court was composed of Thomas Courtland Manning, Chief Justice; Robert H. Marr; Alcibiade DeBlanc; William B. G. Egan; William B. Spencer.

13. 2 La. Digest xi (West, 1953); Dart, *The History of the Louisiana Supreme Court*, reprinted in 133 La. Rep. liv (1913).

14. La. Const. art. 80 (1879).

15. OFFICIAL JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1879, 65, 107 (1879).

16. Introduced as Ordinance No. 441.

ticalars, there appeared to be very little opposition to the plan of creating intermediate appellate courts, and the ordinance relating to the judiciary, substantially as recommended by the committee, was adopted by a vote of 83 to 20.¹⁷

Among the delegates who voted against the ordinance was H. R. Lott, of West Carroll Parish, who recorded the following reasons for his vote:

"I am opposed to the ordinance on the following grounds:
"First — The Supreme judges hold their offices too long.

"Second — The intermediate circuit courts, or courts of appeal, are a useless appendage to the system. Therefore, a sort of supreme court on the pony order without a head traveling through the State at a cost of forty thousand dollars a year. It will never meet the expectations of those who are proposing it.

"Third — The system for the city is both expensive and oppressive. The salaries in the first place are too high, and in the second place the manner provided for raising the money to pay these salaries is covert and oppressive, falling upon the people as a burden which they are poorly able to bear. These objections located as they are in different parts of this ordinance as a whole, compels me to vote against it. I vote 'No.'"¹⁸

The constitution adopted in 1879 provided for the creation of six courts of appeal in the state. One of these courts was designated as the Court of Appeal for the Parish of Orleans, and it was vested with jurisdiction in appeals only from that parish.¹⁹ The rest of the state was divided into five circuits, numbered from one to five, with a court of appeal created for each.²⁰ The first circuit was composed of fourteen parishes located in the northwestern portion of the state; the second circuit included parishes in the northeastern part; the third circuit was composed of parishes in the central and southwestern part of the state; the fourth circuit included the Florida parishes and those around the Baton Rouge area; and the fifth circuit covered the parishes along the Mississippi River and in the sugar belt in South Louisiana.

17. OFFICIAL JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1879, 296 (1879).

18. *Ibid.*

19. La. Const. arts. 128-129 (1879).

20. *Id.* arts. 95-106.

The jurisdiction of courts of appeal outside of Orleans Parish, under the 1879 Constitution, was limited to appeals in cases, civil or probate, when the matter in dispute or the funds to be distributed exceeded \$200.00 and did not exceed \$1,000.00, exclusive of interest.²¹ The Court of Appeal for the Parish of Orleans was given jurisdiction in the same type matters where the amount in dispute exceeded \$200.00 and was less than \$1,000.00, exclusive of interest, but with the added provision that, "Said appeals shall be upon questions of law alone in all cases involving less than five hundred dollars, exclusive of interest, and upon the law and the facts in other cases."²² The above-quoted provision relating to appeals in cases involving less than \$500.00 applied only to the Orleans Court of Appeal, and it was strictly construed.²³

Article 81 of the 1879 Constitution provided that the Supreme Court had jurisdiction in cases where the amount in dispute "*shall exceed*" \$1,000.00, while Article 128 provided that the Court of Appeal for the Parish of Orleans had jurisdiction in cases when the amount in dispute "*is less than*" \$1,000.00. The appellate courts soon were confronted with the issue of whether either of these courts could entertain an appeal in a case which involved exactly \$1,000.00, and it was determined that the term "less than one thousand dollars" in Article 128 was used inadvertently, and that the jurisdiction of the Court of Appeal for the Parish of Orleans, like that of the other courts of appeal in the state, extended to cases where the amount in dispute was \$1,000.00.²⁴

The jurisdictional amounts set for courts of appeal by the 1879 Constitution was too restrictive, so in 1882 the legislature proposed an amendment to the constitution enlarging the jurisdiction of those courts to include all cases, civil or probate, where the amount in dispute exceeded \$100.00 and did not exceed \$2,000.00, exclusive of interest.²⁵ This amendment was adopted in April 1884. The hiatus in the provisions of the constitution

21. *Id.* art. 95.

22. *Id.* art. 128.

23. *State ex rel. Harmony Club v. Judges, Court of Appeal*, 42 La. Ann. 1080, 8 So. 277 (1890).

24. *Louisiana Ice Co. v. State National Bank*, 32 La. Ann. 597 (1880); *Sarrat v. L'Hote*, 32 La. Ann. 1303 (1880); *Tupery v. Harper*, 32 La. Ann. 1303 (1880); *Hardwicke v. Shelby*, 32 La. Ann. 1303 (1880).

25. La. Acts 1882, No. 125, proposing amendments to La. Const. arts. 81, 95, 101, 128 (1879), which were adopted April 22, 1884.

relating to suits involving exactly \$1,000.00 also was eliminated by the amendments adopted in 1884.

The six courts of appeal created by the Constitution of 1879 were composed of two judges each, with the provision that when both judges concurred their judgment was to become final, but when they disagreed the judgment appealed from should stand affirmed.²⁶ This provision of the constitution soon proved to be impracticable, so in 1884 the constitution was amended to provide that when the two judges on any court disagreed they were required to appoint a lawyer possessing the qualifications for a judge of the court of appeal of their circuit, who would aid in the determination of the case, and that a judgment concurred in by any two of them should be final.²⁷

On January 5, 1880, an order was issued by the Supreme Court directing that:

“All cases in which appeals have been taken to this court or which are now pending herein, of which jurisdiction is vested by the new constitution in the courts of appeal, are ordered to be transferred for trial to the courts of appeal of the circuit from which the appeal has been taken.”

The records of the Supreme Court do not show the number of cases which were transferred to the six newly-created courts of appeal at that time. The docket book of the Court of Appeal for the Parish of Orleans, however, shows that immediately after the above order was issued 84 cases were transferred to that court. Approximately one-third of those cases had been lodged in the Supreme Court more than five years before the transfer was made, a substantial number of those cases having been appealed in 1873, or seven years before courts of appeal came into existence. Records are not available to determine how many cases were transferred to the five other courts of appeal outside the Parish of Orleans.

The creation of courts of appeal in 1879 apparently had the desired effect of decreasing the work load of the Supreme Court. The records of that court reflect that during the five-year period immediately preceding this change, that is from January 1, 1875,

26. La. Const. art. 101 (1879).

27. See note 25 *supra*. See also Hardin, *The History of the Courts of Appeal of Louisiana and Their Judges*, REYNOLDS-HEBOLD LOUISIANA APPEAL DIGEST v-vi (1928).

to January 1, 1880, a total of 2,164 cases were appealed to the Supreme Court. During the five-year period immediately following this change, or from January 1, 1880, to January 1, 1885, a total of only 1,641 appeals were lodged with that court, approximately 500 cases less than the number appealed during the preceding five-year period. When the jurisdiction of courts of appeal was enlarged in 1884, the effect was to reduce further the number of appeals to the Supreme Court, the records of that court showing that during the five-year period from January 1, 1885, to January 1, 1890, only 1,181 cases were appealed to the Supreme Court.

The six courts of appeal created by the Constitution of 1879 existed for approximately twenty years, but by that time public sentiment had been built up to the effect that courts of appeal were too expensive and should be abolished. A constitutional convention was called in 1898, the three primary purposes of that convention being to prohibit lotteries, to make changes in the laws relating to suffrage and to reform the judiciary. Most of the delegates to this convention recognized the need for some type of intermediate appellate court, but they felt that something had to be done to decrease the cost of litigation. Thomas J. Kernan, of Baton Rouge, who attended the convention as a delegate, perhaps expressed the feeling which prevailed at that time in an address delivered by him to the Louisiana Bar Association in June 1898, in which he said:

“The next great subject that claimed the earnest attention of the convention was the judiciary system. Much complaint had been heard of its expense, its cumbersomeness and its inadequacy. The efforts of the convention were directed toward making the system less expensive both to the public and the litigant, while at the same time improving its efficiency.

“ . . .

“Long before the meeting of the convention, popular opinion had crystallized into a well defined demand for the abolition of the Circuit Court of Appeals. It can not be denied that there was merit in the contention, that the cost of the court to the State was out of all proportion to the amount of work required of it. The statistics furnished the convention showed that each case heard by the court cost the State,

in judges' salaries alone, about \$100. Expense was not the only account in the popular indictment against the Court of Appeals. It was also charged, not without reason, that it was a Court of great power, but little authority and responsibility. On the other hand, the Court was dear to the heart of the country lawyer, because he did not have to leave home and his client did not have to pay for a transcript. The costs of appeal to the litigant were nominal, averaging, as they did, hardly more than \$5 per case. Some kind of intermediate court of appeal was an absolute necessity, because the Supreme Court had already been allotted all the work it could possibly do. The problem was to establish such a one, that the enormous expense to the State might be decreased, if possible, without increasing the cost to the litigant. Uniformity of jurisprudence and a proper sense of responsibility in courts of such large jurisdiction were also desiderata not to be neglected."²⁸

At the 1898 convention the Committee on the Judiciary, with Thomas J. Semmes of New Orleans as its chairman, introduced an ordinance providing that six courts of appeal be continued substantially as they had previously existed.²⁹ This proposal, however, met with extensive opposition. Phanor Breazeale, of Natchitoches, moved to amend the ordinance by eliminating all courts of appeal completely, except the one for the Parish of Orleans. J. B. Snyder, of Tensas Parish, proposed that courts of appeal as then existing be abolished, but that in their stead there be one court of appeal for every two judicial districts, each of said courts of appeal to consist of the district judges from two other judicial districts. Semmes offered a committee amendment proposing that the six courts of appeal be continued, each having only two judges, except that the Orleans Parish and Fourth Circuit Courts of Appeal consist of three judges each. The committee amendment offered by Semmes was adopted on April 28, 1898, and all other inconsistent proposals were rejected. Four days later, however, on a motion by Mr. Breazeale, the convention by a vote of 54 to 42 decided to reconsider the vote by which it had passed the Semmes amendment. On reconsideration, Mr. Breazeale offered as a substitute that all courts of appeal be abolished, except in Orleans Parish, and that district judges of two districts serve as judges of the

28. PROCEEDINGS OF THE LOUISIANA BAR ASSOCIATION 63-65 (1898-1899).

29. Ordinance No. 365. MILLER, THE LOUISIANA JUDICIARY 71-72 (1932).

courts of appeal for two other judicial districts throughout the state. This substitute, which was substantially the same plan proposed by J. B. Snyder a few days before, was adopted by a vote of 63 to 47. Two days later, however, on motion of Mr. Snyder, that vote also was reconsidered. By the time that vote came up for reconsideration a majority of the delegates apparently had worked out a plan which was acceptable to them, and a further substitute offered by William O. Hart, of New Orleans, was adopted with very little debate. The plan so adopted became a part of the Constitution of 1898.³⁰

The Constitution of 1898, containing the substitute plan offered by Mr. Hart, enlarged the Court of Appeal for the Parish of Orleans to three judges, and provided that the territorial jurisdiction of that court should be increased to include appeals from the Parishes of Jefferson, St. Charles, Plaquemine and St. Bernard, in addition to those from the Parish of Orleans.³¹ The courts of appeal in the rest of the state, however, were practically abolished as separate and distinct courts. Article 99 provided that the five courts of appeal which existed in the rest of the state should remain as then constituted until the first day of July, 1900. From that day until July 1, 1904, each of said courts was to consist of the court of appeal judge whose term had not expired and one district judge to be designated and assigned to that duty by the Supreme Court. No other circuit court judges were to be elected, and after July 1, 1904, the five courts of appeal outside of Orleans Parish were to be composed of "two District Judges to be from time to time designated by the Supreme Court and assigned to the performance of duties of judges of said Courts of Appeal."³²

The reasons assigned by some of the delegates to the 1898 convention for voting to abolish courts of appeal indicate the general feeling which prevailed among the delegates on that issue. Crawford A. Presley, of Natchitoches, for instance, stated:

"I vote in favor of abolishing the Appellate Judges for I think they are unnecessary and to abolish this court it will be a great saving to the state. I vote yes."

Riley J. Wilson, of Catahoula, said:

30. OFFICIAL JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1898, 331-33.

31. La. Const. art. 131 (1898).

32. *Id.* art. 99.

"The platform on which I was nominated declared in favor of abolishing the Circuit Court of Appeals, and as I know what my people want in that respect, I want to represent their desires by voting yes."

Robert L. Draughon, of Tangipohoa Parish, assigned these reasons for his vote:

"I vote yes on this proposition on the grounds of economy and believe that we will have just as good a system of courts of appeal and at no additional cost to the State. It will save the State and taxpayers between twenty and twenty-five thousand dollars."

A. W. Faulkner, of Caldwell Parish, submitted this explanation:

"I vote yes, because I consider the substitute offered by the delegate from Tensas — if adopted — would meet with the general approval of at least three-fourths of the tax-paying people of the State. By adopting the substitute, there is about twenty-four thousand dollars a year saved to the tax-paying people, and an improvement in our judiciary system, both as to economy and service. I consider the adoption of the substitute abolishing Courts of Appeal in the country parishes, when their respective terms to which they were elected expires, and substituting District Judges Courts of Appeal as one of the best measures adopted by the Constitutional Convention. Our judicial system, then, would be heartily approved by the people, as to service and economy, and general efficiency."³³

The 1898 Constitution provided that the Court of Appeal for the Parish of Orleans had jurisdiction over appeals from the City Court in New Orleans, and that all such appeals "shall be tried *de novo*, and the judges of the court of appeal may provide by rules that one or more of the judges shall try such cases, which they shall be authorized to decide immediately after trial, and without written opinion."³⁴ A similar provision was contained in each of the two succeeding constitutions,³⁵ and it has been a source of great annoyance to the judges of the Orleans

33. OFFICIAL JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1898, at 327, 332.

34. La. Const. art. 143 (1898).

35. La. Const. art. 131 (1913); LA. CONST. art. VII, §§ 77, 91 (1921).

Court of Appeal for sixty years. The revised plan of appellate jurisdiction being inaugurated today eliminates the requirement that these cases be tried *de novo*.

The provisions of the 1898 Constitution abolishing most of the courts of appeal as separate courts also proved to be unworkable, so by amendments to the constitution adopted on November 6, 1906, another important change was made.³⁶ A three-judge Court of Appeal for the Parish of Orleans was continued, but the jurisdiction of that court was further enlarged to include appeals from the Parishes of St. James and St. John the Baptist, in addition to the five parishes already included in the jurisdiction of that court. The rest of the state was divided into *two* circuits, with a court of appeal consisting of three judges for each of those circuits. The first circuit consisted roughly of all parishes in the southern half of the state, except for the seven parishes included in the jurisdiction of the Court of Appeal for the Parish of Orleans, and the second circuit included all parishes in the northern half of the state. The judges of these new courts were elected on January 16, 1907, for terms beginning on March 1, 1907. The three courts of appeal created at that time have existed until today, with no change in territorial jurisdiction.

A constitutional convention was called in 1913 primarily to make changes in the constitution relating to the state's bonded debt and relating to the Sewerage and Water Board of the City of New Orleans. In spite of the fact that the convention was restricted by the call, it undertook also to make changes in the judiciary. Two significant provisions relating to the jurisdiction of courts of appeal were attempted in that constitution. One was the removal of the \$100.00 minimum amount required for vesting jurisdiction in these courts, that constitution providing simply that the jurisdiction of courts of appeal shall extend to certain cases, "when the amount in dispute or the funds to be distributed shall not exceed two thousand dollars."³⁷ The second important change attempted was a provision enlarging the jurisdiction of courts of appeal to include all cases, civil and probate, within the \$2,000.00 maximum, "of which the Civil District Court for the Parish of Orleans or the District Courts throughout the State have exclusive original juris-

36. La. Acts 1906, No. 137, proposing amendments to La. Const. art. 99 (1898), which were adopted November 6, 1906.

37. La. Const. art. 98 (1913).

diction and of which the Supreme Court is not given jurisdiction."³⁸ Both of these provisions in the 1913 Constitution were held to be invalid, however, as being in violation of the restrictions imposed on the convention in its call.³⁹ The 1921 Constitution restored the \$100.00 minimum requirement for vesting jurisdiction in courts of appeal, and it also included a provision extending the jurisdiction of courts of appeal to all cases, civil and probate, within the monetary limits, "of which the Civil District Court for the Parish of Orleans, or the District Courts throughout the State, have exclusive original jurisdiction, . . . and of which the Supreme Court is not given jurisdiction."⁴⁰

Many ordinances relating to the judiciary were proposed at the 1921 Constitutional Convention, some of which included major changes in the organization of courts of appeal. An ordinance introduced by S. D. Ponder, of Sabine Parish, for instance, proposed the establishment of *four* courts of appeal, consisting of three judges each, with terms of eight years.⁴¹ Other ordinances proposing four courts of appeal, but with some modification as to jurisdiction and organization, were submitted by Allen J. Ellender, U. A. Bell, Phillip S. Pugh, and L. O. Pecot.⁴² One of these ordinances proposed twelve-year terms for the judges of those courts. J. B. Snyder, of Madison Parish, offered an ordinance proposing the creation of *three* courts of appeal, consisting of *five* judges each, to be elected for terms of twelve years, two of the judges of each court to be elected from the circuit at large.⁴³ All of these ordinances included proposals that the jurisdiction of the courts of appeal be greatly increased, most of them providing that these courts be given appellate jurisdiction in some criminal cases and in civil cases involving amounts up to \$5,000.00 or \$10,000.00.

The Committee on the Judiciary, under the chairmanship of Winston Overton of Calcasieu Parish, after considering all of these proposals, introduced Ordinance No. 486 as a committee substitute for 44 other ordinances relating to the judiciary. This

38. *Ibid.*

39. La. Acts 1913, No. 1; *Wunderlich v. New Orleans Ry. & Light Co.*, 145 La. 21, 81 So. 741 (1919); MILLER, *THE LOUISIANA JUDICIARY* 83-85 (1932).

40. LA. CONST. art. VII, § 29 (1921).

41. Ordinance No. 53. See OFFICIAL JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1921, 67-69.

42. Ordinance Nos. 89, 180, 212, 273. See OFFICIAL JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1921, 64, 147-55, 184-88, 237-41.

43. Ordinance No. 332. See OFFICIAL JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1921, 290-303.

ordinance provided that the three existing courts of appeal be continued, that they consist of three judges each, that they be elected for terms of eight years, and that the jurisdiction of those courts be somewhat enlarged. This proposal of the committee was debated for several days and was amended in many particulars. One of these amendments, which was adopted by a vote of 55 to 36, increased the terms of court of appeal judges from eight to twelve years. The ordinance, as amended, was finally passed by a vote of 106 to 11.⁴⁴ J. L. Westbrook, of Livingston Parish, who voted against it, explained his vote as follows:

"I vote 'no' on Ordinance No. 486 on account of the matter of salaries. It is my opinion that we should not have either raised or fixed salaries in the constitution. This is no time for raises in salaries, and we should have authorized the legislature to adjust all salaries in the future."⁴⁵

One of the important changes made by the 1921 Constitution relating to courts of appeal, in addition to the change previously mentioned, was the increasing of the jurisdiction of those courts to include all suits for damages for physical injuries to or for the death of a person, regardless of the amount claimed, and all suits for compensation under any State or Federal Workmen's Compensation Act.⁴⁶ No other significant changes in the jurisdiction of courts of appeal were made after 1921 until today, when major changes, of course, become effective.

The jurisdiction of courts of appeal was enlarged by the Constitution of 1921, but there was no corresponding increase in the number of judges serving those courts. Within a few years, therefore, there was a substantial backlog of cases in both the Orleans Court and in the Second Circuit Court of Appeal.⁴⁷ The First Circuit Court had fewer cases appealed to it, and apparently that court was able to keep up with its docket.⁴⁸ In some manner, however, all of the courts of appeal have managed to bring their dockets up to almost current condition by this time.

Although the principal purpose of enlarging the jurisdiction of courts of appeal in 1921 was to relieve the congested docket of the Supreme Court, there actually was a substantial *increase*

44. OFFICIAL JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1921, 1024.

45. *Ibid.*

46. LA. CONST. art. VII, §§ 10, 29 (1921).

47. See remarks of George S. Guion and Fred G. Hudson, Jr., in REPORT OF THE LOUISIANA STATE BAR ASSOCIATION 54, 73 (1929).

48. See remarks of Charles A. McCoy in *id.* at 57. See also Miller, *Judicial Reorganization*, 7 TUL. L. REV. 236 (1933).

instead of a *decrease* in the number of cases appealed to that court following the adoption of the 1921 Constitution. During the five-year period immediately prior to January 1, 1922, a total of 2,710 cases were appealed to the Supreme Court, whereas 3,349 cases were appealed during the five-year period immediately following that date, an average increase of more than 125 cases per year during the latter five-year period. When the constitutional convention assembled in 1921, the Supreme Court was more than 800 cases behind in its docket. The 1921 Constitution, however, increased the number of Justices on the Supreme Court from five to seven, and it authorized the court to sit in divisions. The court did sit in divisions for a period of time and succeeded in whittling down this backlog. By 1923 the number of untried cases had been reduced to about 700,⁴⁹ and by 1929 that number had been further reduced to approximately 500.⁵⁰ Today there are 394 cases pending in the Supreme Court which now come within the recently revised jurisdiction of courts of appeal, and this might be considered as the current backlog of cases in that court. The constitutional amendments which go into effect today at last should give some effective relief to the Supreme Court.⁵¹

The method of selecting judges for courts of appeal has been altered since these courts were first created. From 1879 until 1898 judges of the courts of appeal were "*elected by the two houses of the General Assembly in joint session.*"⁵² This appears to be the only instance in the history of this state where that method was employed for the selection of members of the judiciary. Justices of the Supreme Court have been elected since 1904, and judges of inferior courts, other than courts of appeal, have been elected since 1868. Prior to those dates, members of those courts were appointed by the Governor, with the advice and consent of the Senate, except for the period from 1852 until 1864 when they were elected.

The Committee on the Judiciary appointed at the convention held in 1879 recommended that judges of the courts of appeal be appointed by the Governor. C. Knobloch, of LaFourche Par-

49. REPORT OF THE LOUISIANA STATE BAR ASSOCIATION, remarks of Chief Justice Charles A. O'Niell, at 16; Associate Justice Ben C. Dawkins, at 50; Benjamin B. Taylor, at 89 (1929).

50. *Ibid.*

51. Tucker, Tate & McMahon, *Appellate Reorganization in Louisiana*, 19 LOUISIANA LAW REVIEW 287 (1959).

52. La. Const. art. 96 (1879).

ish, proposed as a substitute that these judges be elected. M. J. Cunningham, of Natchitoches, offered as a further substitute that the judges of the courts of appeal be "elected by the two houses of the General Assembly in joint session." J. McConnell, of New Orleans, proposed that they be elected by the two houses of the General Assembly "from recommendations made by the Supreme Court." The proposals of Knobloch and McConnell failed, but the substitute offered by Cunningham to the effect that the judges of these courts be elected by the two houses of the General Assembly was adopted by a vote of 65 to 43. The Constitution of 1898 changed the method of selecting judges of the Court of Appeal for the Parish of Orleans by providing that thereafter judges of that court should be *elected* by the qualified electors of that circuit.⁵³ When courts of appeal were re-established in the rest of the state in 1906, the constitutional amendment re-establishing them also provided that the judges of those courts were to be *elected*.⁵⁴ The office of judge of a court of appeal in Louisiana has been an elective office since that time.

The Constitution of 1879 failed to specify the terms of office of judges of the courts of appeal, so the legislature, in 1880, fixed the term at eight years.⁵⁵ No further change was made in the term of office until 1921, when the Constitution adopted that year increased it to twelve years.⁵⁶ The terms of Justices of the Supreme Court and of judges of the district courts, of course, also were increased in 1921.

The judges of courts of appeal outside of Orleans Parish received salaries of \$4,000.00 per year from 1879 until 1921, except for the period between 1898 and 1906 when there were no circuit court judges outside of Orleans Parish. The 1921 Constitution increased these salaries to \$6,000.00 per year, and although this constitutional provision has never been changed, the legislature from time to time has increased the salaries of the judges of those courts so that during the past eight years the salary of each such judge has been \$15,000.00 per year. Effective July 1, 1960, the salaries of judges of the courts of appeal will be further increased to \$17,500.00 per year.

The judges of the Orleans Court of Appeal received the same salary as did other court of appeal judges from 1879 until 1913.

53. La. Const. art. 131 (1898).

54. *Id.* art. 100, as amended by La. Acts 1906, No. 137, adopted November 6, 1906.

55. La. Acts 1880, No. 16.

56. LA. CONST. art. VII, § 19 (1921).

The 1898 Constitution, however, contained two conflicting provisions relative to their salaries, one providing for an annual salary of \$4,000.00 and the other a salary of \$5,000.00.⁵⁷ The legislature apparently leaned toward paying the lower figure, however, since only \$4,000.00 per year was appropriated for the salary of each of the judges of that court from 1898 to 1913. The 1913 Constitution increased the salaries of the Orleans Court judges to \$5,000.00, while leaving that of the judges of other courts of appeal at \$4,000.00. The 1921 Constitution fixed the salaries of judges of all courts of appeal at \$6,000.00, and thereafter the increases authorized by the legislature applied to all such courts. In 1928, however, the City of New Orleans was authorized by the legislature to supplement the salary of each judge of the Court of Appeal for the Parish of Orleans by an amount not to exceed \$1,000.00 per year.⁵⁸ In 1944 the city was authorized to increase these payments to a maximum of \$3,000.00 per year.⁵⁹ The 1950 statute which increased the salaries of judges of the courts of appeal to \$12,000.00 per year, however, also provided that the salary paid to such a judge by the state must be reduced in those instances where a judge received additional compensation from any local governing authority, so that in any event the judge's salary should not exceed \$12,000.00 per year.⁶⁰ This particular provision was repealed the following year, however, and since that time the City of New Orleans has had authority to pay to each judge of the Orleans Court of Appeal compensation up to a maximum of \$3,000.00 per year in addition to the salary paid by the state.⁶¹

Retirement pay under certain circumstances was authorized for the Chief Justice and Justices of the Supreme Court by the Constitution of 1913.⁶² The 1921 Constitution extended this authorization to judges of all courts of record, and, although the Constitution has been amended from time to time thereafter, retirement pay has been available to judges of courts of appeal, under circumstances set out in the Constitution, since that time.⁶³

57. La. Const. arts. 99, 131 (1898).

58. La. Acts 1928 (E.S.), No. 16, § 1.

59. La. Acts 1944, No. 63, § 1.

60. La. Acts 1950, No. 60, § 1.

61. La. Acts 1951 (1 E.S.), No. 15, § 1. In a brief history of the courts of appeal found in 2 La. Digest xi (1953), Judge George Janvier states that each judge of the Orleans Court of Appeal receives a salary of \$2,250.00, which is paid by the City of New Orleans.

62. La. Const. art. 86 (1913).

63. LA. CONST. art. VII, § 8 (1921), as amended by La. Acts 1928, No. 139, adopted November 6, 1928; La. Acts 1936, No. 321, adopted November 3, 1936;

The domicile of the Court of Appeal for the Parish of Orleans has always been in the City of New Orleans, and all of its sessions have been held in that city. No domicile was designated for any of the other courts of appeal in Louisiana, however, until 1921, when the domicile of the first circuit was established at Baton Rouge, and that of the second circuit at Shreveport.⁶⁴ The new court of appeal, created by recent amendments to the constitution and being inaugurated today, will have its domicile in Lake Charles.

Heretofore all courts of appeal in Louisiana, other than the one for Orleans Parish, have been peripatetic courts. The 1879 Constitution contained a requirement that the judges of those courts of appeal, until otherwise provided by law, shall hold two terms annually in each parish comprising their respective circuits, and the dates on which sessions were to be held in each parish were specified in the Constitution.⁶⁵ These schedules were later rearranged in some circuits by the legislature.⁶⁶ The 1898 Constitution contained a requirement that two terms of the courts of appeal should be held in each parish annually, on dates to be fixed by the courts, until July 1, 1904, and that thereafter the dates were to be fixed by law.⁶⁷ The legislature accordingly, in 1904, fixed the dates for holding these sessions.⁶⁸ The constitutional amendments adopted in 1906, establishing three courts of appeal, provided that sessions in the first circuit should be held in ten specified cities in the circuit, until otherwise provided by the legislature. In the second circuit sessions were required to be held in seven designated cities.⁶⁹ Substantially the same requirements for holding sessions of court were included in the 1913 Constitution.⁷⁰ The Constitution of 1921 established a domicile for the First Circuit Court of Appeal at Baton Rouge, and provided that that court must also sit at least twice a year at New Iberia, Opelousas, and Lake Charles. The domicile of the Second Circuit Court was fixed at Shreveport, and that court was required also to sit twice a year at Alexandria

La. Acts 1938, No. 333, adopted November 8, 1938; La. Acts 1956, No. 588, adopted November 6, 1956.

64. *Id.* §§ 22, 23.

65. La. Const. arts. 98, 99 (1879).

66. La. Acts 1886, No. 122; La. Acts 1888, No. 112; La. Acts 1892, No. 19.

67. La. Const. art. 100 (1898).

68. La. Acts 1904, No. 183.

69. La. Const. art. 100 (1898) as amended by La. Acts 1906, No. 137, adopted November 6, 1906.

70. La. Const. art. 100 (1913).

and Monroe.⁷¹ Both of these courts, of course, have always had authority to hold sessions in other places within their circuits. The constitutional amendments which become effective today eliminate the requirement that judges of the courts of appeal ride circuits, as they have done for eighty years, so hereafter all sessions of the courts of appeal should be held at their respective domiciles.

There was no provision for a clerk for any of the courts of appeal outside of Orleans Parish until 1921. Prior to that time the clerk of the district court in which a session of the court of appeal was held was directed to serve as clerk of that court. The 1921 Constitution, however, contained a provision authorizing the courts of the first and second circuits to appoint their own clerks and deputies, but directed the clerk of the district court of the parish in which the session was held to serve as clerk of the court of appeal until a clerk should be appointed by that court.⁷² The legislature, in 1921, appropriated the sum of \$4,800.00 to pay the salaries of clerks of these two courts of appeal for one year beginning July 1, 1921.⁷³ The Second Circuit Court appointed a clerk in 1921, but no clerk was appointed that year in the first circuit. The following year the legislature appropriated the same amount per year for the two-year period beginning July 1, 1922, but this appropriation was vetoed by the Governor.⁷⁴ No further appropriation was made for clerks of these courts until 1926, when the sum of \$7,200.00 per year was appropriated to pay their salaries for the two years beginning July 1, 1926.⁷⁵ The legislature, in 1926, also appropriated \$3,600.00 to pay the back salary of the clerk of the Second Circuit Court of Appeal from July 1, 1925, to July 1, 1926. The Second Circuit Court of Appeal in some manner managed to keep the clerk appointed by it in 1921, in spite of the fact that no funds were appropriated to pay his salary from July 1, 1922, to July 1, 1925. The First Circuit Court of Appeal did not appoint a clerk until 1926.

Complete records of the Court of Appeal for the Parish of Orleans from 1880 to date are located at the domicile of that court in New Orleans. Records of the First Circuit Court of

71. LA CONST. art. VII, §§ 22, 23 (1921).

72. *Id.* § 28.

73. La. Acts 1921, No. 119.

74. La. Acts 1922, No. 12.

75. La. Acts 1926, No. 196. The annual salary of the clerk of each of these two courts was fixed at \$3,200.00 by La. Acts 1926, No. 53.

Appeal are complete from and after 1926, and records of the Second Circuit Court of Appeal are complete from 1921 to date. Prior to those dates, however, the records of the courts of appeal, other than the Court of Appeal for Orleans Parish, were kept by the clerks of the district courts. These older records are incomplete, and those which exist are scattered throughout the state.

Reports of the decisions of the courts of appeal were irregular and incomplete until 1924. Judge Frank McGloin was the first to report these decisions, his report consisting of two volumes covering the period from 1881 to 1884. Judge A. A. Gunby published a private edition of synopses of the decisions rendered by the Second Circuit Court of Appeal during the year 1885. J. H. Donovan and Company published the first nine volumes of reports of the Court of Appeal for the Parish of Orleans, and Fernand F. Teissier reported and published volumes ten to fourteen of these reports, all of which covered the period from 1903 to 1917. Teissier also published a one volume digest of cases decided by the Court of Appeal for the Parish of Orleans between 1917 and 1922, but the full text of these decisions has never been reported.⁷⁶

Prior to 1921 there was no legal authority or appropriation of public funds for reporting decisions of the courts of appeal. The Constitution of 1921, however, directed that "decisions of the Courts of Appeal shall be reported and published together, under the direction of the judges of said courts, and according to rules which they may establish," and that "the publication of decisions shall be let by contract to the best bidder, who need not be a citizen of the State."⁷⁷ This authorization may have been prompted by the fact that the 1921 Constitution increased the jurisdiction of courts of appeal, making those decisions more important to members of the bar. Pursuant to this constitutional mandate, the legislature in 1921 appropriated the sum of \$3,000.00 for publishing these reports.⁷⁸ A like amount was appropriated for each of the two succeeding years.⁷⁹ These appropriations were inadequate, however, so nothing was done toward accomplishing that purpose until 1924 when the legisla-

76. WALLACH, RESEARCH IN LOUISIANA LAW 78-81 (1958); Hardin, *The History of the Courts of Appeal in Louisiana and Their Judges*, REYNOLDS-HEROLD LOUISIANA APPEAL DIGEST vii (1928).

77. LA. CONST. art. VII, § 17 (1921).

78. La. Acts 1921, No. 119.

79. La. Acts 1922, No. 12.

ture, in response to a request of the Louisiana Bar Association, appropriated \$13,000.00 for that purpose. Adequate appropriations were made annually thereafter until 1932.⁸⁰ As soon as adequate funds were appropriated a contract was awarded to the Hauser Printing Company, after competitive bidding, for the printing and publishing of these reports,⁸¹ the editing of which was entrusted to J. B. Herold of the Shreveport bar. Under this arrangement the decisions of all of the Louisiana Courts of Appeal were published in 19 volumes, beginning with the fall term of 1924 and continuing through 1932. These decisions have been reprinted by West Publishing Company, and decisions of the courts of appeal have appeared in the Southern Reporter since September 1928, beginning with Volume 118 of that reporter system. Also, Judge J. E. Reynolds and J. B. Herold published in a one-volume digest of cases decided by the courts of appeal of Louisiana from 1924 to 1928, this digest being identified as the "Reynolds-Herold Louisiana Appeal Digest."

Courts of appeal in Louisiana have always been under the control and supervision of the Supreme Court. The Constitution of 1879, which created courts of appeal, provided for the first time that the Supreme Court should have control and general supervision over all inferior courts.⁸² It was determined soon after that constitution was adopted that courts of appeal were "inferior courts" within the meaning of that article, and that they were subject to the control and supervision of the Supreme Court.⁸³

Courts of appeal did not have authority to certify to the Supreme Court questions or propositions of law arising in cases pending before them until 1898. The constitution adopted that year, however, gave that authority to the court of appeal,⁸⁴ perhaps because most of the court of appeal judges were being replaced by district judges at that time. Such a provision has been continued in succeeding constitutions.

Many able and distinguished jurists have served as members of the courts of appeal in Louisiana during the past eighty years.

80. La. Acts 1921, No. 119; La. Acts 1922, No. 12; La. Acts 1924, No. 94; La. Acts 1926, No. 196; La. Acts 1928, No. 143; La. Acts 1932, No. 12.

81. A brief history of how the reports of the courts of appeal were first published may be found in the foreword to 1 LOUISIANA COURTS OF APPEAL REPORTS (Hauser Printing Co. 1926).

82. La. Const. art. 90 (1879).

83. State *ex rel.* Harper v. Judges, Court of Appeal, 33 La. Ann. 358 (1881).

84. La. Const. art. 101 (1898).

It is because of the ability and dedicated service of these judges that courts of appeal are now vital parts of the judicial machinery of this state. The recent decision of the citizens of Louisiana to amend the Constitution, greatly enlarging the jurisdiction and authority of courts of appeal, may be construed in some measure as a tribute to the judges who have served as members of those courts. No attempt will be made here to give a biographical sketch of each of these jurists, but the names of all judges who have served as members of the courts of appeal from the time these courts were created until July 1, 1960, are supplied in an appendix to this study.

In comparison to other appellate courts, the Louisiana courts of appeal may be said to be of relatively recent origin. Yet, during their eighty years of existence the organization and jurisdiction of those courts have undergone many changes. Some mistakes appear to have been made, but the record shows that they were quickly corrected, and the overall result has been the development of a highly efficient system of appellate jurisdiction in our state. With the further changes which become effective today, Louisiana perhaps now has a finer plan of appellate jurisdiction than exists in any other state in the Union.

What changes may be made in the judiciary of this state in future years, of course, cannot be foretold. Louisiana, however, has never hesitated to make changes in any branch of its governmental structure when it appeared that such a change would result in an improvement. Building and improving a judicial system, of course, is a never-ending process, so we may look forward to further revisions of appellate jurisdiction in future years. A review of this kind, however, should give us a satisfying assurance that the overall result of these future changes will be further improvements in what many lawyers and judges of this state now regard as a model judicial system.

MEMBERS OF COURTS OF APPEAL*

UNDER CONSTITUTION OF 1879

First Circuit

John Conway Moncure	1880-1896	Edgar Williamson Sutherlin	1892-1900
Alexander Banks George	1880-1892	John Crea Pugh	1896-1904

Second Circuit

Oren Mayo	1880-1883	Thomas B. Clinton	1883-1888
W. W. Farmer	1880-1881	Edward Calvin Montgomery	1888-1904
Andrew A. Gunby	1881-1892	Joseph Medicus Kennedy	1892-1900

*This list augments to date the list of judges of the courts of appeal compiled by Judge George Janvier which is found in 2 La. Digest xi-xiii (1953).

MEMBERS OF COURTS OF APPEAL—Continued

<i>Third Circuit</i>			
Alfred Briggs Irion	1880-1884	W. F. Blackman	1892-1900
Joseph Murtaugh Moore	1880-1888	Edward Taylor Lewis	1894-1896
John Clegg	1884-1892	Julian Mouton	1896-1904
Robert S. Perry	1888-1894		
<i>Fourth Circuit</i>			
Charles McVea	1880-1886	Milton A. Strickland	1888-1896
Samuel J. Powell	1880-1892	James McFarlane Thompson	1892-1900
William Fergus Kernan	1887-1888	William Walter Leake	1896-1904
<i>Fifth Circuit</i>			
J. Richard Winchester ¹	1880-1880	Henry Darley Smith	1882-1900
Adrian C. Dumartrait	1880-1882	Rene Toutant Beaugard ²	1888-1900
Eugene William Blake	1881-1888		

UNDER CONSTITUTIONAL AMENDMENT OF 1906 AND
CONSTITUTIONS OF 1913 AND 1921

<i>First Circuit</i>			
Louis Phillip Caillouet	1907-1912	J. Hugo Dore	1935-1953
Stephen Dudley Ellis	1907-1924	C. Ellis Ott	1936-1947
Julian Mouton	1907-1935	Robert S. Ellis, Jr.	1948-
Paul Leche	1912-1930	Morris A. Lottinger	1950-
Clay Elliott	1924-1935	A. B. Cavanaugh	1953-1954
Sam A. LeBlanc	1930-1949	Albert Tate, Jr.	1954-
<i>Second Circuit</i>			
Luther Egbert Hall	1907-1910	Harmon C. Drew ⁴	1930-1945
Lynn K. Watkins	1907-1911	Thomas G. McGregor	1931-1932
Charles Vernon Porter	1907-1924	James G. Palmer	1932-1932
David Newton Thompson ³	1910-1924	E. P. Mills	1933-1935
Richard Cleveland Drew	1911-1913	Robert M. Taliaferro	1933-1951
Benjamin Pearce Edwards	1913-1915	Joe Busbey Hamiter ³	1936-1942
Robert Roberts	1915-1917	George W. Hardy, Jr.	1943-
Robert Brooks Dawkins	1917-1923	Robert F. Kennon ⁵	1945-1952
Joseph B. Crow	1923-1924	Jesse F. McInnis ⁶	1945-1946
Marshall Hampton Carver	1924-1925		1952-1953
J. E. Reynolds	1924-1930	Edward L. Gladney	1951-
Fred M. Odom ³	1924-1930	H. W. Ayres	1954-
Rhydon Dickens Webb	1925-1931		

UNDER THE CONSTITUTIONS OF 1879, 1898, 1913 AND 1921,
AND CONSTITUTIONAL AMENDMENT OF 1906

<i>Court of Appeal for the Parish of Orleans</i>			
Walter Henry Rogers	1880-1884	Charles F. Claiborne	1913-1928
Frank McGloin	1880-1892	Max Dinkelspiel	1918-1923
Henry Brooke Kelly	1884-1894	William A. Bell	1922-1923
Robert Nash Ogden	1892-1900	William W. Westerfield	1923-1947
Owen Wynne Rogers	1894-1896	Walter Catesby Jones	1926-1929
Horace Lewis Dufour	1896-1913	George Janvier	1928-
Rene Toutant Beaugard	1900-1904	Archibald T. Higgins ³	1929-1934
Isaiah D. Moore	1900-1909	Richard W. Leche ⁷	1934-1936
Albert Estopinal	1904-1909	E. Howard McCaleb, Jr. ⁸	1937-1946
Emile Godchaux	1909-1918	Richard T. McBride	1947-
John St. Paul ³	1909-1921	Godfrey Z. Regan	1948-

¹Served portion of year.²In 1900 became member of Court of Appeal of the Parish of Orleans under provisions of article 131 of the Constitution of 1898.³Elected to Supreme Court.⁴Holdover tenure, 1942-1945.⁵On leave of absence to enter military service, 1942-1945; elected Governor, 1952.⁶Temporarily appointed, 1945 to 1946; appointed June 16, 1952, retired December 31, 1953.⁷Elected Governor.⁸Temporarily appointed to Supreme Court, May 23, 1941, through December 31, 1942; elected to Supreme Court 1946.