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Re-arranging the Indiana Judiciary (continued)

Theophilus J. Moll

Marion County Superior Court

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RE-ARRANGING THE INDIANA JUDICIARY
(Continued)

THEOPHILUS J. MOLL.*

By Federal Act of 1815, the composition and sessions of the General Court in Indiana Territory were fixed, and the next year it was given chancery as well as common law jurisdiction. By this law, sessions were required to be held at Vincennes, Corydon and Brookville, with at least two judges appointed by the United States, and no territorial judge was allowed to associate with them. This is the only case of exercising reserved control by the Federal Congress with the local courts that we have discovered. Its mandatory tenor and its drastic limitations indicate that Washington was getting impatient with Hoosier vacillations regarding its public agencies to administer justice. The Assembly next met at Corydon in December, 1815, with the usual grist of court bills. It also dissolved a marriage between a named couple and legalized the marriage of the male plaintiff and another woman he was living with but not naming her.

Steps were being taken looking to Statehood. Kettleboro says that one of the circumstances conspiring to demand Statehood in 1815 was the “excessive powers exercised by the Territorial Governor” in appointing, among others, “the General Court, the Court of Chancery, three judges of the Court of Common Pleas in each county and numerous justices of the peace.” As to the General Court, the reader will recall Congress was provoked to repeal his power to appoint General Court judges. In this same connection, the author quoted says further: “Politics has been

* See biographical note, p. 316.

12 Jackson county was created, with court to be held at Velonia. The circuit court act of 1814 was amended and the circuit judges salary raised $100. The jurisdiction of justices was extended. Orange county was created, with court to be held at private residences until a court house was erected. The time for holding court in the new counties was fixed.
the most potent factor in advancing or retarding constitutional amendments.” The 1816 constitutional convention was actually in session only eighteen days. Of the fourteen committees, one was to draft an article concerning the judicial department, another as to appeals from the Territorial to the State courts. The Constitution was never submitted for adoption but seemingly went into effect as soon as the convention adjourned. It was received with general satisfaction and without serious protest from the people. One objection was limiting the term of office of judge, the claim being that the tenure of a judge should be determined by good behavior and that elected judges are too much inclined to yield their judicial independence to conciliate public opinion and secure their re-election. The human equation has not altogether disappeared yet.

By the first Constitution the circuit courts consisted of a presiding and two associate judges; the State was divided into three circuits with common law and chancery jurisdiction; judges held office seven years; superior court judges were appointed by the Governor, the Senate concurring; presiding judges by joint ballot of the Legislature, and associate judges were elected by the respective counties; vacancies were filled by the same means; justices of the peace were elected in the several townships and held office five years. The salaries of the superior court judges and the presiding Circuit Court judges were fixed at $800. All territorial judges were continued in office until superseded under the authority of the Constitution. We have traced somewhat minutely the initiations of Indiana courts from session to session to show how we started wrong, and how the mistakes crept in; from now on we shall trace the changes and effects only from revision to revision.

The first Revision of the State Laws was 1824. An unsuccessful attempt to secure another constitutional convention was made in 1825, and a revision of the statutes substituted. An amendment had been separately proposed in 1822 and rejected, to make justices of the peace county courts. The first revision was in chapters alphabetically arranged. Chapter 24 organized circuit courts and defined their powers and duties. They had plenary power as to crimes and civil actions, both common law, equity and special cases, and appointed prosecuting attorneys. Chapter 25 organized a Supreme Court with three judges, each of whom had to swear he had not given or carried a challenge to a duel with deadly weapons. The court had two terms,
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May and November, continuing thirty days. It had appellate jurisdiction from all circuits, except that no appeal lay in any criminal case. (Today most of its time is taken up with criminal appeals.) The modus operandi of appeals was prescribed and the appellee might demand a trial at the next ensuing term. (A wise provision which has fallen into the discard.) Only errors in law could be assigned, except that in will cases errors of fact might be assigned to be determined by the court. Verdicts were final as to facts. Appeals must be taken within five years, unless appellant was under disability. Witnesses and jurors might be summoned. Chapter 26 divided the State into five circuits and fixed the terms; at that time there were fifty-one counties. Marion was in the Fifth circuit, and court was held six days beginning the first Monday in April and October, if necessary. The Assembly of 1824 amended this by extending it to nine days, and made other special changes. Chapter 29 required the circuit judge to read the whole criminal code to each grand jury. Chapter 41 allowed an attorney fee of $10.00 as costs in favor of the winning party on an appeal. Chapter 57 regulated the jurisdiction and duties of justices of the peace, including trivial breaches of the peace, finable by not over $3.00, and in civil cases up to $50.00; appeals to the Circuit Court might be taken within thirty days and were determined in a summary way if less than $20.00 was involved. Attorneys might qualify as justices. Chapter 78 granted certain privileges and immunities to supreme and circuit judges. Probate jurisdiction was given circuit courts in Chapter 79. Chapter 88 cut the salaries of Supreme Court judges $100 and made them equal to Circuit Court judges, $700. Changes of venue in civil cases in the circuit courts were provided for and regulated by Chapter 115. This Revision covered 372 pages. Another unsuccessful effort was made in 1828 for a constitutional convention.

The next authorized Revision was 1831, with 472 pages. Chapter 10 provided for circuit prosecutors appointable for two years by joint ballot of the Assembly. The State then had sixty-three counties. Chapter 22 defined the jurisdiction of circuit courts and Chapter 23 provided for seven circuits. Chapter 24 concerned the Supreme Court. The duel feature of the judges' oaths was omitted. Appeals from justices in all cases under $20.00 were denied, and in general if under $50.00. The time for appeal was cut down from five years to the term when judgment was rendered, and the transcripts must be filed generally within sixty days. Supersedeas, if granted, operated only for
four years, even if the case might not be decided on appeal in that time. Writs of error might be brought within five years. Opinions were required to be written "except in cases and on subjects of an unimportant nature," which provision might well be resurrected. The old territorial probate courts were revived. Judges were elected septennially, but must first have obtained a Supreme Court certificate of qualification. If a probate judge was interested in any pending matter, it was transferred to the Circuit Court. (The bill disqualifying legal representatives to act as judges before the 1925 Assembly was provisioned by this act.) Special provision was made as to terms in certain counties, a vicious practice that still prevails. Chapter 54 regulated justices in criminal cases and re-enacted the old law as to civil matters, except it increased jurisdiction up to $100 concurrent with the Circuit Court, provided for arbitrations, and contemplated juries of twelve (since 1833, six).

Another authorized Revision was published 1838, with 546 pages. It differed from the others in that all the acts on any subject were set out as a single chapter. The State was divided into nine circuits and several special laws regulating terms of particular courts were passed. Probate judges might get their certificates of qualification from circuit judges, which certificates "shall have a due regard to legal qualifications," but were not limited to lawyers. The jurisdiction of justices was materially increased in criminal matters, and also in civil cases having exclusive jurisdiction in most matters not over $50.00; appeals for greater amounts lay to the circuit. There were special rules as to civil actions in eighteen named counties, including Marion. The first Municipal Court appears to have been contemplated in 1838 by a law giving town trustees power to enforce their ordinances by fine up to $3.00, but no court is specifically mentioned.

Another unsuccessful attempt at calling a constitutional convention was made in 1840. Another Revision was authorized in 1841 and 1842. It appeared in 1843, and its preface truly said "there were numerous defects in the existing statutes." A systematic arrangement was followed and adopted, consisting of four parts, the third of which referred to courts. There were at that time eighty-eight counties. Three Supreme Court judges were provided, and one presiding judge and one prosecutor for each circuit, two associate judges and one probate judge for each county, and a competent number of justices in each township. The trial judges held office seven years, the justices five. Additional justices based on towns were contemplated. Pros-
Executors at first were chosen by the Assembly, later by the circuit electorate. Supreme Court judges were appointed by the Governor. Masters in chancery were appointed by the presiding judges. The Supreme Court had appellate jurisdiction only, except it might try capital crimes and chancery matters if the presiding judge was disqualified. Terms of thirty days were held in May and November. Appeals and writs of error were specifically regulated. Appellants, except in will cases, could assign only errors of law, but it might try facts and call juries in chancery matters, or send this to a Circuit Court for trial. The Supreme Court was authorized to frame writs, govern bonds, grant supersedeas, and make rules, to abolish fictitious proceedings, simplify pleadings, expedite decisions, diminish costs. (There should be a reversion to this idea.) Twelve judicial circuits were formed, with plenary jurisdiction in all civil matters in law and chancery, and of all crimes. Twenty-five sections were given to regulating attorneys and their admission. The provisions of former Revisions as to probate courts were readopted and amplified. Justices' jurisdiction was limited to $100.00 in contract and $50.00 in tort. Appeals were allowed within thirty days on filing bond. Certiorari was allowed to a Circuit Court in certain cases, a statutory, if not a common law, innovation. Constables were elected for one year (a better rule than prevails now). Writs of mandate or of prohibition might issue from a higher to lower court. Justices had exclusive criminal jurisdiction where the maximum fine was $3.00.

In 1846 an effort was made to have another constitutional convention. A majority of the votes cast, but not of the qualified electors, favored it. A similar effort in 1849 resulted in the second constitutional convention. At this convention, in 1850, a resolution was introduced to inquire as to districting the State for judicial purposes; another that associate judges of circuit courts be dispensed with; another, that in criminal cases the jury should find the facts only, leaving the courts to apply the penalty and punishment in case of conviction. Recently I heard the judge of a court having jurisdiction including criminal cases advocate this rule, doubtless being of the opinion it was a novel notion. Another resolution was to provide Supreme Court judicial districts with one judge from each, and another to provide five such districts, rules which prevail today. Another prohibited a Supreme Court judge to report the court decisions; and one sought to consolidate circuit and probate courts. Another to provide a commission to revise the rules of ju-
Still another to abolish the Supreme Court and substitute a different court whereby a speedy and impartial trial of appeals might be had. There is no record of any contempt proceedings being brought. Resolutions were framed both to forbid and to allow suits against the State. Another as to the term and election of Supreme Court judges. Another that every free white male citizen over twenty-one and of good moral character shall be permitted to practice law in all the courts of the State.

Section 22 of Article IV of the new Constitution forbade local or special laws regulating the jurisdiction of justices, regulating the practice in courts, etc. Article VII referred to the judicial power, vested in a supreme court, circuit courts, and inferior courts legislatively established. Written statements of the questions arising and the decision thereon were required. No judge could be reporter. Circuit courts of one judge each were apportioned to the judicial districts. "Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice."

The Revised Statutes of 1852 were arranged alphabetically, as all but those of 1843 had been. There were then ninety-one counties. For the first time, city mayors were given judicial powers, equal to those of a justice, both civil and criminal, and exclusive as to ordinance violations; in his absence a justice held court for him. In this Revision no act purported to regulate attorneys' fees. Chapter 61 prescribed that crimes shall be defined and the punishment fixed by statute and not otherwise. Supreme Court judges were paid $1200, Circuit $1000. Violations of town ordinances were punishable before justices, making a distinction between city and town courts. Volume 2 of this Revision is in effect the Practice Code of Indiana, both civil and criminal, before justices. The Supreme Court was increased to four, one of whom should be chief justice. Ten circuit courts were provided with exclusive jurisdiction as to defamation, breach of promise, real estate titles, and civil cases of $1000 and more; "and concurrent jurisdiction when under $1000" and original exclusive jurisdiction in all felonies. Common pleas courts were re-established, the State being divided into forty-three districts with one judge each. They were given exclusive probate jurisdiction and concurrent jurisdiction with the circuit where the demand was not over $1000, and with justices where not less than $50.00. Appeals lay from this court to the Circuit or Supreme Court at appellant's option, and from justices to this court. Criminal jurisdiction covered offenses not exclu-
sively within the circuit or justices' courts. Length of terms depended on population of the given counties, beginning with the largest county. Likewise salaries varied with the population, ranging from $300 to $800. The judges might practice law in other courts, but not as to any readjudicated matter in their own courts. Priority of business was (1) criminal, (2) probate, (3) other matters. The constitutional provision regarding admission was supplemented by adding: "Moral character may be proved by any evidence satisfactory to the court."

"Courts of conciliation" were devised presided over by a common pleas judge, who heard the parties privately, and if reconciled entered the fact of record, which thereafter constituted a bar. The court had to "determine every controversy submitted to it for determination, according to conscience and right, without regard to technical rules." The criminal code provided for a prosecuting attorney in each circuit, and a district attorney for each common pleas district.

The Gavin & Hord Revision of 1862 marks the beginning of privately edited and published statutes. It was considerably annotated. Outside the Civil Code of 1881 there has been no official Revision since 1852. Written (but not printed) briefs were required on appeal by an Act of 1855. Special terms of circuit courts were authorized by another Act. Certain common pleas courts were specifically abolished in 1852, including Marion County. Another Act specially provided for appeals from common pleas courts in criminal cases directly to the Supreme Court. By a special Act masters in chancery, probate judges, and circuit court clerks might issue writs of habeas corpus. Common pleas and circuit courts had concurrent jurisdiction of divorces, bastardy cases and breaches of the peace, an early instance of confused authority. Appeals to the Supreme Court lay as a matter of right by any defendant adjudged guilty and writs of error were abolished. The State might appeal in certain cases. By a special Act of 1853, if the Marion Circuit Court was in session when the Supreme Court was scheduled to sit, the circuit was adjourned for two weeks. Justices were limited to three per township, plus one for each incorporated town therein. Twenty-one common pleas districts were provided by Act of 1861.

A House of Refuge for correcting and reforming juvenile offenders was contemplated by Act of 1855. By Act of 1857 the mayors of cities held court as justices. By special Act of 1852 the State was divided by counties into four districts. Terms of court in common pleas were specified; fourteen circuit
courts were provided. In 1865, Marion County was raised to the sublime degree of a separate circuit, numbered 16, with a "criminal court (circuit)" with terms beginning in January and July to try criminal actions alone.\(^{14}\) Seven other circuits were formed. Considerable doubt existing as to whether the Criminal Court was of the class of circuit or other courts, an Act was passed leaving it to be determined whether it was a six or four-year office. The latter prevailed. By the succeeding Act, criminal cases pending were transferred to the Criminal Court. A multitude of Acts regulating terms of various circuits was enacted and there has been no cessation of special laws concerning courts since. Not infrequently they have applied simply to counties within a circuit; sometimes changes occurred twice in succession as to the same circuit or county. The same story applied to the common pleas courts while in existence. Numerous Acts sought to validate irregular proceedings in various courts. In 1865 salaries were fixed at $3000 for Supreme Court judges, $2000 for Circuit Court judges and $1500 for Common Pleas judges. Criminal courts were created in 1867 for Wayne, Allen and Tippecanoe counties, but were abolished in 1875. Another 1867 Act permitted two additional justices for each city within a given township, and another provided for a separate building for the Supreme Court and its library. Still another repealed all previous laws not conforming to the Supreme Court ruling in London v. Applegate, 5 Ind. 327. These Acts were all passed in the sixties and doubtless were blamed on the war. It is certain that the criminal courts were designed to stop a crime wave following the Civil War. Quere: did they or have they? Even the 1867 requirement that city mayors should hold court every week day did not help much.\(^{15}\) By Act of 1871 a Superior Court of three judges was created for counties of 40,000 inhabitants, Marion being the only one affected. Terms began the first Monday of each month, except July and August. It had concurrent jurisdiction in civil matters with the circuit and common pleas courts, except in slander. The judges received $3500 a year, part from the State and part from the county. By Act of 1872, five Supreme Court districts and judges were provided, Marion County being in the Third district, the Governor to appoint the additional judge. By an Act of 1875 cities of over 6,000 might elect city judges

\(^{14}\) R. S. 1870 Supp., p. 172. Although a criminal court was not mentioned in the title as required by constitution, the Act was upheld, 26 Ind. 98.

\(^{15}\) They had sole jurisdiction over city ordinance violations, and concurrent with justices otherwise.
whose court had jurisdiction concurrent with justices, and with
the circuit up to $1500 except in certain cases, upon six days' 
note, a precursor to the 1925 municipal courts. Changes of 
venue were grantable to justices and circuits in proper cases, 
juries consisted of six, unless the parties demanded twelve; 
appeals lay to the Circuit Court. A new list of thirty-eight 
circuits had been adopted in 1873. In 1875 the Tippecanoe 
Superior Court was created, with one judge with concurrent 
jurisdiction with the circuit in civil matters (with a few excep-
tions) and on appeals from justices, mayors, and county board; 
appeals lay to the Supreme Court. In 1877 the Vanderburg 
and Allen Superior courts were created similar to the others. 
In 1879 the fourth judge of the Marion Superior Court, pro-
vided in 1877, was abolished. In 1881 the Vigo Superior Court 
was created. Each of these, but Marion, had one judge. These 
courts had no jurisdiction of causes in which the common pleas 
courts had original exclusive jurisdiction. In 1881 Revision 
was official as to its first part, relating to courts and procedure; 
in its second part all the other laws, alphabetically arranged, 
were given. The revisors were appointed by the Supreme Court.

The common pleas courts had been abolished in 1873, and 
their jurisdiction transferred to the circuit courts. In 1881 the 
Supreme Court was authorized to appoint, for two years, com-
missioners as a sort of deputy judge but with no power of final 
decision. Both general and special terms of the Marion Su-
perior Court were provided, with appeals from special to general 
terms, and from general terms to the Supreme Court.16 The 
Criminal Court, by 1881 Act, had original exclusive jurisdiction 
in crimes above those conferred on justices and appellate juris-
diction in criminal cases appealable in other counties to the cir-
cuit. The Vigo Criminal Court was abolished November, 1882. 
Circuit judges were empowered to appoint master com-
missioners, and all county courts were furnished court reporters. 
The ordinary number of justices was increased to three per 
township. Their jurisdiction was fixed at $100, concurrent to 
$200, and for confessed judgment $300. Certain actions were 
excluded. Jurisdiction in criminal cases extended over the 
county. The Supreme Court commissioner Act of 1881 was 
estended two years in 1883, and a new Act passed over the 
Governor's veto in 1889 provided for five commissioners ap-
pointive for four years, with the same salary as Supreme Court

16 R. S. 1881, Sec. 1360. One volume of Superior Court General Term 
decisions was published unofficially.
judges. This was the precursor of the Appellate Court. Between 1883 and 1889, forty-three Acts were passed creating circuits or changing terms of circuit courts. The Marion Superior Court was constituted a State Court of Claims in 1889. The maximum number of justices, ordinarily, was cut down to two in 1883, and municipal justices had to reside in the given municipality.

The first Revision by Harrison Burns was in 1894. In 1891 an appellate court was created, composed of five judges, with exclusive jurisdiction, with certain exceptions, of appeals from circuit, superior, and criminal courts, including misdemeanors, justices' cases over $50.00, money judgments not over $3500, recovery of specific personalty, landlord cases, and most probate cases; in these its decisions were final. Exceptions were those involving the validity of statutes and ordinances, suits in equity and title to real estate. In 1893 it was given jurisdiction over foreclosures of statutory liens not over $3500. The State was divided into districts corresponding to the Supreme Court districts. Term of office was four years, the first judges were appointed, and the next Assembly continued them in office for four years. The statute evidently contemplated written decisions only on reversal and allowed the Appellate Court to decide what opinions should be published. By Act of 1893 the court was to cease March 1, 1897, and revert to the Supreme Court.

Since 1887 there had been at least fifty Acts passed affecting the number, extent and terms of circuit courts, of which there were now fifty-six. By Act of 1891 county commissioners were, upon petition, required to appoint as town justice a resident of such town. If a written obligation within a justice's jurisdiction had several obligors, one of whom lived in his township, he was given jurisdiction as to the others throughout the State. By Act of 1891 circuit judges in counties of over 30,000 might appoint probate commissioners for not over four-year terms with duties to be defined by the court. His acts were supervised by the circuit judge and final orders signed by such judge.

By Act of 1897, the existence of the Appellate Court was extended to January 1, 1901, the then present judges being continued in office, at which time it was to revert to the Supreme Court.17 Over twenty new Acts regarding terms of circuit courts were passed in 1895 and 1897, and three new circuits created. In 1895 appeals might be taken directly from a special term of the Marion Superior Court. A Superior Court was

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17 R. S. Supp. 1897, Secs. 1363 a-b. Extension of judges' terms declared unconstitutional, 151 Ind. 679.
created for Madison County with plenary civil jurisdiction. At the same session a joint Superior Court for Lake, Porter and LaPorte counties was created, with one judge. Sessions were split up into weeks, like the olden times as to circuit courts. It had jurisdiction concurrent with the circuit in civil matters, except actions involving realty title, and in misdemeanors. This was probably the most radical departure from the Circuit Court as conceived in the Constitution, in that it virtually created a second Circuit Court in each of the counties named. However, it was declared constitutional. In 1897 its jurisdiction was made co-extensive with the Circuit Court, except as to probate matters, and realty titles. In 1897 a Superior Court for Grant and Howard counties was created, with the same jurisdiction as circuit courts, except probate matters and settling estates. Courts in cities over 100,000 were in 1895 given original concurrent jurisdiction with the criminal courts in petit larceny and other crimes where the maximum penalty was $500 fine and six months in jail. Other than as to ordinance violations, they had no civil jurisdiction.

In 1901, the Appellate Court was increased to six judges, distributed three each to the north and south halves of the State. Appeals lay to it in all cases except where specifically limited to the Supreme Court, and in its cases its decisions were final, except that where at least two judges were of opinion that a ruling precedent of the Supreme Court was erroneous, it might transfer the case to the Supreme Court; or the losing party in the intermediate court might petition for a transfer; or the losing party in an action of over $6000 might take a further appeal to the Supreme Court. Over twenty Acts regarding terms of circuits were passed in 1899 and 1901. In 1899 the jurisdiction of the Lake, LaPorte and Porter Superior Court was made co-extensive with the circuit. The ordinary number of justices was reduced in 1899 to two instead of three per township, with a maximum of five in the largest one. In townships of between 35,000 and 60,000 the limit was two. In Center Township, Marion County, justices were changed from a fee basis to a salary in 1899.

In 1903, appeals from justices' to the State courts were prohibited if below $50.00, but appeals in all misdemeanors were allowed. Twenty-five new Acts regarding circuit courts were passed in 1903 and 1905. A Juvenile Court for Marion County was created in 1903, with jurisdiction in all cases relating to children, exclusive of probate matters. The same year defendants in misdemeanor cases might appeal to the Supreme Court
or Appellate Court, but this seems to have been changed and all criminal appeals go to the Supreme Court. The Sixty-first Circuit was created in 1905. The Marion Superior Court was increased to five judges in 1907. The Lake, LaPorte and Porter Superior Court was split in 1907 into two judicial districts, one consisting of Lake with court to be held at Hammond, and the second including the other counties. The Elkhart and St. Joseph Superior courts were created the same year, with one judge, with the same jurisdiction as circuit courts. The city of Elkhart was designated where court should be held in Elkhart County. Thus, Hammond and Elkhart mark departures from holding court in county seats. Probate courts in counties of over 100,000 were created in 1907, with jurisdiction in partitions, receiverships, habeas corpus, wills, trusts, divorce, and all probate matters proper. In 1907 the cases appealable to the Supreme Court were particularized and somewhat extended and all others must be taken to the Appellate Court.

For a great many years the Revisions have contained this recital: “Judicial circuits and the terms of court being subject to such frequent changes, a list of the counties in alphabetical order, together with the number of the circuit and the time of beginning terms, with a reference to the statute fixing the same, is given instead of the entire Acts.” By the Revision of 1914, the circuits had increased to sixty-seven. The Superior Court of Lake County was increased to three judges in 1911, the judge of Room 3 to hold court alternately at Hammond and the county seat, Crown Point, making still another innovation. The Howard Superior Court was abolished and its pending business transferred to the circuit in 1909; the Grant Superior Court was continued and combined with one in Delaware County thereby created, with jurisdiction corresponding to the circuit except in probate matters. This jurisdictional arrangement was upheld by the Supreme Court. In 1913, Elkhart and St. Joseph counties were each made a separate judicial district with superior courts, and these had plenary jurisdiction with the circuit courts.

In 1915 the cases appealable to the Supreme Court were again enumerated and changes made; in 1921 appeals to the Supreme Court from interlocutory orders of county courts were provided. In 1917, Room 3 of the Lake Superior Court was required to meet in Gary instead of Hammond, and sessions at Crown Point were no longer required. “St. Joseph Superior Court No. 2” was established in 1921, with power identical with the circuit, and apparently not connected with the original St. Joseph
Superior Court except that it transferred half its pending business to the new court. The same thing had happened in Vigo in 1919, except jurisdiction was limited to civil cases. A criminal Court was established in 1919 in Lake County similar to that of Marion County. In 1917, the Marion Probate Court was relieved of trying divorce cases.

A Probate Court was established in Vanderburg County in 1919, with one judge, with concurrent powers with the Superior and Juvenile courts, still another variation of the constitutional Circuit Court. County Court judges' salaries were substantially increased in 1921. In 1921, townships containing the major part of a second class city not a county seat were limited to one justice. A new list of causes appealable directly to the Supreme Court was adopted in 1925. There are at present seventy-one circuit courts, one with three counties, nineteen with two and the rest with one county, all with terms as various as the circuits. A Superior Court for Knox County was created in 1925, with plenary power except as to probate matters. The judge of the Marion Criminal Court was in 1923 authorized to appoint special judges not exceeding one hundred days a year, to relieve congestion. Another startling innovation was the creation in 1925 of "Municipal courts," affecting only Marion County, with jurisdiction up to $500 in contract and tort throughout the county, and in criminal cases as first class cities then had, and ordinance violations; four judges were provided, appointive by the Governor, bipartisan in character, to hold court in quarters provided by the county at its expense, their salaries to be paid by the county; appeals in civil cases lie to the Appellate Court, and in criminal cases to the Criminal Court, thus raising the latter to the former or lowering the former to the latter. By another law, townships containing the major part of a city of 300,000 are to have but one justice. Thus we have a nominal City Court, paid by the county, and supplanting justices, the logical result of the course the Legislature has pursued since 1784.

CONCLUSION

We have thus at some length traced the history and development of the Indiana judiciary. We have noted the Constitution names only the supreme, circuit and justices' of the peace courts. We have seen the creation by the Legislature of Supreme court commissioners, of appellate, common pleas, criminal, superior, juvenile, probate and municipal courts; we have
observed the habit of the Legislature in making changes every session; we have watched the jurisdiction of the justices increased and that of the Supreme Court reduced; we have watched the Circuit Court jurisdiction in certain counties whittled down by the creation of other courts with exclusive jurisdiction, or co-ordinated with still others with concurrent jurisdiction. The Constitution no doubt contemplated a definite, standard, even though elastic, judiciary. Shall the Legislature continue to make a football of the courts, or shall a system be evolved which will accommodate itself to growing communities and changing conditions?

We suggest the following system as a solution: Limit the character of courts to that of the respective municipal areas; the Supreme Court for the State, the Circuit Court for the county, the Municipal Court for the town or city, and the justice of the peace for the township. On this basis, there need never be any changes, departure or experiment. Have only one State court, and that supreme in truth and in fact. Increase the number of judges by constitutional amendment separately submitted, from five to nine. Likewise, divide the State into three judicial districts, instead of five, and make these the Northern, Central and Southern districts, based on population. Have each district elect three judges, one each two years, the term of each being six years. Let each such district constitute an appellate circuit as later described. Publish none but Supreme Court decisions and these as the court itself prescribes. Make the salaries proportionate to the dignity of the office, to the wealth and population of the State, and to the salaries paid by corresponding sister States.

Amend the Constitution, by separate submission, and strike out the limitation of one judge to a circuit, and let the number of judges per circuit be predicated on population. Thirty thousand seems to have been the standard in creating new courts. Let that stand. Unite counties below that number in such manner as to aggregate approximately 30,000, with one judge for the circuit. If a county has over 30,000 give it one circuit judge for each 30,000 or fraction thereof above one-third; that is, two judges if 40,000 or more, three judges if 70,000 or more, and so on. If two or more judges, let each preside over a different division each year and have them elected proportionately at different elections. If two judges, divide the distribution into a criminal and a miscellaneous civil division. If three, divide into civil, criminal and probate. If four, divide into civil, domestic relations (including offenses involving juveniles),
criminal and probate. If five or six, into one or two civil (common law and statutory), one or two civil (equity), and domestic relations, criminal (felonies), criminal (misdemeanors, including juvenile matters and appeals), and probate. If seven or more, one probate, one juvenile, one domestic relations, one felony cases, one misdemeanors cases, others civil, common law, equity, and statutory. As the counties grow, the number of judges automatically increases and the cases are distributed correspondingly. Terms of court should begin on the first Monday of each month and at least one-third of the judges in counties having two or more should sit during July and August. There should be a liberal minimum salary, same to be increased in fixed measure in proportion as the number in the county is increased.

Each Supreme Court district should constitute a separate Appellate Circuit Court made up of five circuit judges of that district, nominated by the Supreme Court judge of that district, not more than two of whom shall be of his political faith, and the others of the opposite faith. They should be nominated biennially on the first of September, and should meet for one week, once each quarter, in the largest county seats in the eastern, central and western thirds, respectively, of their district, beginning on the fourth Monday of the respective month. The same circuit judge should not be nominated twice in succession. Appeals from the respective circuits should be to this appellate circuit as now lie to the State courts. The decision of the appellate circuit should not be reported and should be final unless at least two of the Supreme Court judges from that judicial district, or at least three such judges from the State at large, shall deem the question novel or important enough. Appeals as of right should lie in all cases involving capital punishment or life imprisonment or the validity of any statute or ordinance. Circuit judges so nominated and serving should be allowed extra pay and expenses. Appeals allowed and taken from the appellate circuits should be upon the transcripts and records used in such circuits, and should be limited to questions raised and presented there.

Cities below the second class and towns should have a municipal judge with jurisdiction to try ordinance violations and misdemeanors within the jurisdiction of a justice of the peace. Local courts in cities of the second class should have in addition the civil jurisdiction of justices. Local courts in cities of the first class should have one judge for each 100,000 or major fraction thereof and should have jurisdiction in civil matters up to
$500 and in misdemeanors up to $500 fine and six months' imprisonment. All other cases should go to the proper division of the Circuit Court. Appeals should lie to the circuit, whose decision should be final if not over $200 is involved.

There should be one justice of the peace for each township, such person to be nominated by the circuit judge or county commissioners, and approved by the other. His jurisdiction should be limited to his township outside municipalities therein and should be limited to minor crimes and civil actions. A constable should be appointed in like manner for each justice, and both should receive salaries proportioned to population. He should have no authority in insanity matters.

These proposed changes are logical and based on a century and a half of governmental experimentation. Doubtless much of the criticism of the courts finds its inception in the notion that courts are a football of the Legislature, a mere pawn of politics. None of the changes suggested needs a constitutional amendment, except the number of supreme justices, and their districts, and the number of judges to the circuit. The rest of it is feasible, practical, systematic, and elastic, considerations devoutly to be wished for.