THE JUDICIARY AMENDMENT

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The object of this commentary is twofold: first, to present to the public—particularly the legal public—a complete copy of the revision of Article VIII of the West Virginia Constitution dealing with courts and their personnel, as proposed by the Legislative Interim Committee and as finally approved, with amendments, by the Legislature; second, to call attention, as briefly as practicable, to the substantial changes which the redraft makes in the present Constitution.

The draft presented by the Interim Committee is the result of a long and independent study made by the Committee and its assistants, aided by criticisms and suggestions from the Judicial Council, committees of the West Virginia Bar Association, and from other sources. However, as a matter of giving due credit to others, and as an explanation of the genesis of much of the substance and language of the present draft, it should be noted that the Interim Committee selected as the basis of its study the draft presented to the Governor on December 1, 1930, by the commission which is generally referred to as the Constitutional Commission. A copy of this draft, which has since been the subject of frequent discussions at meetings of the West Virginia Bar Association, will be found in the yearbook of the Association for the year 1932, at page 116, with parallel sections from the present Constitution. Space will not permit a detailed comparison here of the Commission’s draft and the present draft. It must suffice to say that, in many respects, the present draft adopts the substance and language of the Commission’s draft; but in other respects, it departs from the Commission’s draft in substance, language and literary sequence.

It should be particularly noted that it is not the purpose of this discussion to analyze or summarize the entire content of the revised article, or of any section therein, as a substitute for a detailed study and comparison of the redraft with the present Constitution, but only to enumerate the substantial changes which have been made. For this purpose, it is proposed to deal with the sections separately in their proper sequence. However, before this is done, it is believed advisable to give a general summary of the more fundamental and comprehensive changes that have been wrought,

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since they will present a background which will make it easier to understand the significance of various details of the revision when they are approached in a consideration of each separate section.

In brief summary, we may say that some of our present tribunals have been abolished and one new one has been created; that the jurisdictions of those which have not been eliminated have been modified in certain respects to serve the needs of the new situation; and that the effect of the elimination of certain tribunals and the consequent concentration of litigation in the lesser number which remains has been offset by provision for a greater number of judges, where necessary, presiding over a single court.

More specifically, the office of justice of the peace has been abolished. In lieu of the justice's court, a new court, called a summary court, is established. This new court will have jurisdiction throughout the county, territorially in a manner similar to the circuit court. No county will have more than one summary court, although, as will be noted later, the court may, in populous counties, have more than one judge, and the legislature may, if it deems expedient, in order to serve the needs of small or sparsely settled counties, provide that a single summary judge may preside over the courts of more than one county, an arrangement similar to our present judicial circuits. The county courts, and the special tribunals which may be created in lieu thereof, have been retained as constituted in the present Constitution. Likewise, police courts, or mayors' courts, have been retained, although their jurisdiction has been curtailed; and we still have the circuit courts and the Supreme Court of Appeals, with minor modifications in their jurisdictions. Since no provision is made for the existence of any courts below the circuit courts except county courts, police courts and summary courts, all the present courts of limited jurisdiction intermediate between justices' courts and the circuit courts, created by special legislative acts, such as criminal courts and courts of common pleas, have been abolished. In order to enable the circuit courts to handle the additional load of litigation which will fall to their lot because of the abolition of these intermediate courts, provision has been made for the allotment of more than one circuit judge to courts in the more populous counties.

As a consequence of the elimination of justices of the peace and the substitution therefor of the summary courts, it was necessary to modify and reconstruct to a certain extent the administrative machinery and personnel which now serve the justice's court and
adapt them to the needs of the new court. It was also deemed necessary to make provision for the designation of particular persons or officials for the performance of certain subsidiary judicial functions now performed by justices of the peace, but which it is believed could not be adequately performed solely by a summary court or its judge. More specifically, these two necessities have led to the following results.

The justice's administrative officer, the constable, has been eliminated. It is conceived that the functions which he performs for the justice's court can be performed for the summary court by the sheriff and his deputies. It is contemplated that the summary court may have a clerk. However, since the amount of the litigation in some counties may not require the full time of the clerk, provision has been made so that the circuit clerk and his deputies may be required to perform the duties of summary clerk. Justices of the peace perform important functions in administering the law, for themselves and for other courts, in other matters than the mere litigation of common-law actions. They issue attachment writs, distress warrants, warrants of arrest, and admit persons to bail. All these matters frequently require speedy action, in order that justice may not be defeated or that freedom of the person may not be unduly encroached upon. It is conceived that these functions may not be performed speedily enough by a summary court or judge acting alone, since there will be only one summary court in a county and in most counties only one summary judge. Consequently, the Legislature has been given power to designate officers and to appoint specially persons who may exercise these powers, concurrently with the courts and judges, in order to supply substitutes in these respects for justices of the peace.

Since a new jurisdiction has been created for the summary courts, and, as has already been noted, the jurisdictions of some of the presently existing courts have been modified, it will be helpful to notice the principal changes in this respect, and the consequent effects upon relations between the various courts, before passing to consideration of the specific sections. Attention will be given first to original jurisdiction, and then to appellate jurisdiction. It should be noted that we are attempting to consider here only changes in jurisdiction resulting from the redraft, and not the whole jurisdiction, which results largely from provisions in the present Constitution which have not been changed.

With only one important exception, the jurisdiction of the
county courts remains as in the present Constitution. At present, the county courts have original jurisdiction in the probate of wills, in administration of the estates of decedents, and in matters concerning fiduciaries generally and the settlement of their accounts, with the right of appeal to the circuit courts. The redraft provides that such jurisdiction shall remain in the county courts as at present provided, until changed by the Legislature. However, the Legislature is given broad powers to place jurisdiction in these matters wholly in either the county courts, the summary courts, or the circuit courts, and their respective officers, or to distribute the jurisdiction among two or more of these courts and their officers, as it may deem expedient.

The police or mayor's court will have jurisdiction only to enforce municipal ordinances. It will have no concurrent jurisdiction with the summary court, such as the mayor's court has with justices of the peace.

Since the summary court is a new court, a few observations as to its general constitution may not be out of place here. In some respects, it is like the circuit court; in other respects, it resembles a justice's court. Like the circuit court, it may have a clerk; it has the sheriff for its administrative officer; and there is only one such court in a county, although in some counties there may be more judges than one. Like a justice's court, it will be open continuously for the entertainment of litigation and has no terms of court; its juries in all cases shall consist of six jurors (in criminal cases before a justice, the number of jurors may be twelve); a warrant or information (the latter not prevailing in a justice's court) may take the place of an indictment; and its jurisdiction, as presently noted, is limited to the trial of misdemeanors and the lesser matters of civil litigation. Like both the circuit court and the justice's court, its jurisdiction extends throughout the county, but, unlike either, it has power to sit as a court anywhere within the county until such power is curtailed by the Legislature. In criminal cases, the summary court will have such jurisdiction to try misdemeanors as the Legislature shall see fit to give it; but it will have no jurisdiction to try felony cases. In civil matters, it will have no jurisdiction in equity, nor exercise any of the functions of a court of equity, unless the Legislature should give it a jurisdiction in matters concerning the probate of wills, the administration of estates, or fiduciaries which would require the exercise of functions in the nature of equity jurisdiction. In civil actions at law, it will have
jurisdiction where the amount in controversy does not exceed five hundred dollars, and in cases of unlawful detainer when the title to land is not in dispute. Since original jurisdiction of the circuit court will be limited to actions where the amount in controversy is more than two hundred dollars, the summary court will have exclusive original jurisdiction of actions at law where the amount in controversy is not more than two hundred dollars, and it will have concurrent original jurisdiction with the circuit court where the amount in controversy is beyond two hundred dollars and not more than five hundred dollars. However, the summary court, like a justice's court, will have no jurisdiction to try the title to land, and the Legislature is given general power to limit the kinds of litigation which may be entertained by the summary court, even within the five-hundred-dollar limitation. For instance, the Legislature may see fit to deprive the summary court of jurisdiction in actions of libel and slander, seduction, etc., as is now done with reference to the jurisdiction of justices of the peace by Chapter Fifty of the Code. The summary court is given no appellate jurisdiction, except in criminal matters.

The original jurisdiction of the circuit court has been left largely as at present provided. The only change pertinent to the present general summary is the one enlarging the amount in controversy as a limitation upon the jurisdiction of the court. Under the present Constitution, the circuit court has jurisdiction when the amount in controversy is more than fifty dollars. Under the re-draft, it will have jurisdiction only when the amount is more than two hundred dollars.

What has been said thus far relates to original jurisdiction. It remains to note briefly the changes relating to appellate jurisdiction.

No changes have been made as to appellate relief in regard to matters decided by a county court. Matters adjudicated in a police court may be reviewed by appeal to the circuit court. No appeal is allowed from a police court to the summary court. Judgments of a summary court may be reviewed by appeal or writ of error in the circuit court. The judgment of the circuit court upon such an appeal or writ of error may further be reviewed in the Supreme Court of Appeals on a writ of error, provided that the amount in controversy is more than three hundred dollars. It is also provided that the Legislature may permit a judgment of a summary court to be reviewed directly by the Supreme Court of Appeals, on a writ
of error, although, of course, in such case, the amount in controversy must be more than three hundred dollars. The right to appeal to the circuit court is not limited as to the amount in controversy, this matter being left for legislative regulation. Appeals and writs of error from any court to the Supreme Court of Appeals in civil cases are permitted only when the amount in controversy is more than three hundred dollars. Under the present Constitution, the amount is only one hundred dollars. The Supreme Court of Appeals is given general original jurisdiction to entertain the extraordinary remedy of certiorari, in order to remove doubts that seem to prevail as to its powers under the present Constitution in this respect.

It should be noted that all the jurisdictional amounts heretofore mentioned are exclusive of interest and costs.

It may be noted that the Supreme Court of Appeals, in harmony with the rule-making powers already bestowed upon it by the Legislature, is granted general supervisory and regulative control over the administration of justice in all the lower courts.

From this general view of the more salient features of the proposed new system of courts, we may now proceed to a more specific discussion of the changes made in each section. Each of the sections below is a literal copy of a section of the redraft, followed by a commentary note calling attention to substantial changes. No attempt will be made to call attention to changes in the mere form and sequence of language where the substance has not been changed. It is believed that such formal changes and rearrangement as have been made have added to the clarity of the proposed draft. On the whole, however, except where precision and clarity seemed to demand a change, and where no changes in substance were made, an attempt has been made to adhere to the language of the present Constitution.

The first seven sections relate to the Supreme Court of Appeals and its judges and officers.

Sec. 1. Judicial Department. The judicial power of the State shall be vested in a Supreme Court of Appeals, in circuit courts, in such inferior courts and tribunals as are herein authorized, and in the judges of each of said courts and tribunals.

Comment. This section is section one of the present Constitution, establishing our system of courts and judges. The clause providing for justices of the peace has been omitted. A further change relates to judges. As the section is now, it seems to vest
judicial power only in those judges who are judges of the circuit courts. It has been so modified as to vest judicial power "in the judges of each of said courts and tribunals".

Sec. 2. Supreme Court of Appeals. The Supreme Court of Appeals shall consist of five judges. They shall be elected by the voters of the State and shall hold office for the term of twelve years, unless sooner removed in a manner prescribed by this Constitution. They shall receive such salaries as may be fixed by law, and the salary of no judge shall be diminished during the term for which such judge shall have been elected. Any judge in office when this article takes effect shall continue in office until his term shall expire, unless sooner removed in a manner prescribed by this Constitution. A majority of the judges of such court shall be a quorum for the transaction of business.

Comment. This section establishes the Supreme Court of Appeals, fixing the number of judges, the method of selecting them, their term of office, their salaries, and the number necessary to constitute a quorum. Its subject matter will be found in section two of the present Constitution, that part of section sixteen dealing with salaries, and the amendment ratified in 1902. The only substantial change made by the redraft relates to salaries. Section sixteen fixes the salaries of Supreme Court judges at two thousand two hundred dollars per annum. The amendment ratified in 1902 permits the Legislature to fix the amount of the salaries. It provides "The judges of the Supreme Court of Appeals and of the circuit courts shall receive such salaries as shall be fixed by law, for those now in or those hereafter to come into office." This provision would seem to be somewhat ambiguous. Consequently, the following substitute provision has been inserted in the present section of the redraft: "They shall receive such salaries as may be fixed by law, and the salary of no judge shall be diminished during the term for which such judge shall have been elected."

A provision has been added continuing in office all incumbent judges until the expiration of their terms of office. A similar provision has been inserted in all subsequent sections dealing with officials whose offices have not been abolished.

Sec. 3. Provisions for Filling Supreme Court Vacancies. If from any cause a vacancy shall occur in the Supreme Court of Appeals, the Governor shall issue a writ of election to fill such vacancy at the next general election for the residue of the term;
and in the meantime, he shall fill such vacancy by appointment until a judge shall be elected and qualified. But if the unexpired term be less than two years, the Governor shall fill such vacancy by appointment for the unexpired term. The Legislature shall make provision by law for selection of a substitute judge to act in lieu of any judge of such court during his temporary incapacity to perform the duties of his office and shall fix the compensation of such substitute judge.

Comment. This section is section seven of the present Constitution, providing for filling vacancies in the Supreme Court of Appeals. The only change made is the addition of the last sentence, requiring the Legislature to provide for a substitute judge to act in lieu of a judge who is temporarily incapacitated.

Sec. 4. Scope of Jurisdiction of Supreme Court of Appeals. The Supreme Court of Appeals shall have original jurisdiction in cases of habeas corpus, mandamus, prohibition and certiorari. It shall have appellate jurisdiction in civil cases where the matter in controversy, exclusive of interest and costs, is of greater value or amount than three hundred dollars; in controversies concerning the title or boundaries of land, the probate of wills, or the appointment or qualification of a personal representative, guardian, committee or curator; in controversies concerning a mill, road, way, ferry, or landing, or concerning the right of a corporation or county to levy tolls or taxes; in cases of quo warranto, habeas corpus, mandamus, certiorari, and prohibition; and in cases involving freedom or the constitutionality of a law. It shall have appellate jurisdiction in criminal cases where there has been a conviction of a felony or a misdemeanor in a circuit court, and such appellate jurisdiction where there has been a conviction in a criminal case in an inferior court as may be conferred upon it by law. It shall have such other appellate jurisdiction, in both civil and criminal cases, as may be prescribed by law. It shall have general supervisory control over all circuit and inferior courts and tribunals under such regulations as may be prescribed by law. In cases relating to the public revenue, whether civil or criminal, the right of appeal shall belong to the State as well as the defendant.

Comment. This section prescribes the jurisdiction of the Supreme Court of Appeals. It is section three of the present Constitution. The following changes have been made: (a) Certiorari has been added to the Supreme Court’s original jurisdiction. (b)
The appellate limitation as to the amount in controversy has been changed from one hundred dollars to three hundred dollars. (c) The Supreme Court is given direct appellate jurisdiction where there has been a conviction in a criminal case in an inferior court, to the extent that may be provided by law. (d) In next to the last sentence, the Supreme Court is given "general supervisory control over all circuit and inferior courts and tribunals under such regulations as may be prescribed by law."

Sec. 5. Writ of Error, Supersedeas and Appeals; Scope and Form of Decisions. A writ of error, supersedeas, or appeal for review by the Supreme Court of Appeals of any action, suit or proceeding shall be allowed only by the Supreme Court of Appeals, or a judge thereof, upon a petition assigning error in the judgment, decree or procedure of the circuit or inferior court, and then only after said court or judge shall have examined and considered the record and assignment of errors and shall be satisfied that there is error in such judgment, decree or procedure, or that the record presents a point proper for the consideration of the Supreme Court of Appeals.

No decision rendered by the Supreme Court of Appeals shall be considered as binding upon any of the circuit or inferior courts of the State, except in the particular case decided, unless at least three judges of said court concur therein.

When a judgment or decree is reversed, modified or affirmed by the Supreme Court of Appeals, every point fairly arising upon the record shall be considered and decided; the reasons therefor shall be concisely stated in writing and preserved with the record; and it shall be the duty of the court to prepare a syllabus of the points adjudicated in each case in which at least three judges of said court concur. The syllabus shall be prefixed to the published report of the case.

Comment. This section is a combination of sections six, four and five of the present Constitution, segregated into paragraphs in the order in which they are named. It deals with the manner of granting a writ of error, a supersedeas, or an appeal; with the effect of the Supreme Court's decisions; and with the manner of deciding matters on appeals and writs of error and the preparation of opinions. The following changes have been made: (a) The word "decrees" has been added to the first paragraph. (b) The words "circuit or" have been added before the words "inferior court"
in the first and second paragraphs. (c) The word "modified" has been added to the first line of the third paragraph.

Sec. 6. Officers of the Supreme Court of Appeals. The officers of the Supreme Court of Appeals, except the reporter, shall be appointed and may be removed by the court or, in vacation of the court, by the judges thereof. Their duties and compensation shall be prescribed by law.

Comment. This section deals with officers of the Supreme Court of Appeals, their selection, duties and compensation. It is section eight of the present Constitution. No substantial changes have been made.

Sec. 7. Terms of Supreme Court of Appeals. At least two terms of the Supreme Court of Appeals shall be held annually at such times and places as may be prescribed by law.

Comment. This section is section nine of the present Constitution, prescribing the terms of the Supreme Court of Appeals and the times and places when and where they shall be held. No substantial changes have been made.

The next two sections deal with the circuit courts and judges and their jurisdiction.

Sec. 8. Circuit Courts and the Judges and Terms Thereof. The existing judicial circuits shall remain as they are until changed by law, but the Legislature may rearrange the circuits at any session thereof next preceding any general election of the judges of said circuits, and may increase or diminish the number thereof. A judge of a circuit court in office at the time of any such change shall continue a judge of the circuit in which he shall reside after such change until the expiration of the term for which he shall have been elected, unless sooner removed in a manner prescribed by this Constitution.

The judges shall be elected in each circuit by the voters thereof. The number of judges to be elected in each circuit shall be in proportion to the population of the circuit to be determined by the latest official census of the United States. The Legislature shall determine the proportion, which shall be as nearly as practicable uniform for all the circuits in the State. Each of the judges so elected shall hold office for the term of eight years, unless sooner removed in a manner prescribed by this Constitution, but the Legislature shall, if necessary, fix at less than eight years the first term
of the first judge elected to fill any newly created circuit judgeship in order that the terms of all circuit judges may expire at the same time. A vacancy in the office of judge of the circuit court shall be filled in the same manner as a vacancy in the office of judge of the Supreme Court of Appeals. During his continuance in office, a judge of a circuit court shall reside in the circuit of which he is a judge. Any judge of a circuit court in office when this article takes effect shall continue in office until his term expires, unless sooner removed in a manner prescribed by this Constitution.

At least three regular terms of the circuit court shall in each year be held in every county in the State. Provision by law may be made for holding special terms of the circuit court. Provision by law may also be made for holding regular and special terms thereof when, from any cause, a judge shall fail to attend or cannot properly preside. A judge of any circuit may be authorized by the Legislature or may be authorized or required by the Supreme Court of Appeals to hold court in any other circuit. Until action is taken by the Supreme Court of Appeals, the Legislature shall by law make provision for dividing the business of those circuits in which there shall be more than one judge among the judges thereof so as to promote and secure the convenient and expeditious transaction of such business.

Comment. This section is a combination of provisions in sections ten, eleven, thirteen, fourteen and fifteen of the present Constitution. It deals with the constitution of judicial circuits; with the selection, number, qualifications, duties, and terms of office of circuit judges; and with general and special terms of court. Following are the substantial changes which have been made in this section: (a) As has been noted in the general summary, elimination of the intermediate courts, which now relieve the circuit courts of a large burden of litigation in the more populous counties, will place a greater load on the circuit courts of some counties than a single judge can handle. Consequently, the Legislature is given power to provide for the election of more than one circuit judge for a circuit. However, in order to eliminate any temptation to seek an unnecessary number of judges in any particular circuit, provision is made that the number elected for each circuit shall be in proportion to the population of the circuit, to be determined by the latest official census of the United States. (b) In order to facilitate rearrangement of the counties among the circuits, and possibly for other reasons, it is desirable that the terms of all the circuit judges should
expire at the same time. In order to secure such a result in the event that the legislature should deem it advisable to create a new judgeship at a time intervening between general elections of judges, provision is made in the second paragraph of this section that the first term of the judge elected to fill a newly created judgeship may be less than eight years, which is the regular term of office. (c) The following sentence, next to the last in the section, is new: "A judge of any circuit may be authorized by the Legislature or may be authorized or required by the Supreme Court of Appeals to hold court in any other circuit." (d) The last sentence in the section, which follows, has been newly added: "Until action is taken by the Supreme Court of Appeals, the Legislature shall by law make provision for dividing the business of those circuits in which there shall be more than one judge among the judges thereof so as to promote and secure the convenient and expeditious transaction of such business." This provision is in harmony with the provision in section four, which gives the Supreme Court of Appeals general supervisory control over the circuit courts.

Sec. 9 Jurisdiction of Circuit Courts. The circuit courts shall have supervision and control of all proceedings before all inferior tribunals in their respective counties by mandamus, prohibition and certiorari. They shall, except in cases confined exclusively by this Constitution to some other tribunal, have original and general jurisdiction of all matters at law where the amount in controversy, exclusive of interest and costs, exceeds two hundred dollars; of all cases of habeas corpus, mandamus, quo warranto and prohibition; and of all crimes and misdemeanors. They shall have exclusive, original and general jurisdiction in all cases in equity. They shall have appellate jurisdiction in all cases, civil and criminal, where an appeal, writ of error, or supersedeas may be allowed to the judgment or proceedings of any county court, summary court, or inferior tribunal. The circuit courts shall have all judicial power, authority, and jurisdiction not vested by this Constitution or by the laws consistent therewith in some other court or tribunal. They shall also have such other jurisdiction, whether supervisory, original, appellate, or concurrent, as is or may be prescribed by law.

Comment. This section is a redraft of section twelve of the present Constitution, prescribing the jurisdiction of the circuit courts. The following changes have been made: (a) The allusion to justices of the peace in the first sentence has been eliminated.
(b) The minimum amount for which action may be brought in the circuit courts has been changed from an amount in excess of fifty dollars to an amount in excess of two hundred dollars. (c) The circuit courts are given exclusive original jurisdiction in equity cases. (d) The circuit courts are specifically given appellate jurisdiction over proceedings in county courts and the proposed summary courts. (e) A sentence has been added giving the circuit courts generally "all judicial power, authority and jurisdiction not vested by this Constitution or by the laws consistent therewith in some other court or tribunal."

Sec. 10. General Provisions Relating to Judges. All judges of the Supreme Court of Appeals and of the circuit courts shall be commissioned by the Governor and shall receive such salaries as may be fixed by law. The salary of no judge shall be diminished during the term for which he shall have been elected. Such judges may receive the mileage provided by law. No judge, during his term of office, shall practice the profession of law; nor shall he hold any other office than that of judge, or accept any appointment or public trust, under this or any other government, except as provided by law; nor shall he, during his continuance in office, be eligible to any political office, or become a candidate for any elective office or nomination thereto, except a judicial office; and the violation of any of these provisions shall vacate his office.

Comment. This section deals with the subject matter in section sixteen of the present Constitution and in the judicial amendment adopted in 1902. It relates to judges of the Supreme Court of Appeals and judges of the circuit courts, dealing with their salaries and mileage and placing restrictions upon their extrajudicial activities. The following changes will be noted: (a) The provision relating specially to Ohio County has been eliminated. (b) In accord with the provision in section two relating to salaries of Supreme Court judges, it is here provided that the salary of no judge shall be diminished during the term of office for which he shall have been elected. (c) Each judge is to receive the mileage which may be allowed him by law, instead of the same mileage allowed to members of the Legislature as the present Constitution provides. (d) The provision that no judge, during his term of office, shall "hold any other office than that of judge, or accept any appointment or public trust, under this or any other government," has been modified by adding at the end thereof the words "except as provided by law". This change is based on the belief that judges
may render public services which are not incompatible with their offices, and that the Legislature may safely be trusted to define such services. (e) The clause prohibiting a judge to “become a candidate for any elective office or nomination thereto, except a judicial office”, has been newly added. (f) The last clause in the section, providing that a violation of the restrictions shall vacate the judge’s office, has been made to apply to all the restrictions. In the present Constitution, it applies only to some of the restrictions.

Sec. 11. How Judges May be Removed from Office. Any judge of the Supreme Court of Appeals or of a circuit court may be removed from office by a vote of two-thirds of the members elected to each House of the Legislature, each House voting separately, when from age, disease, mental or bodily infirmity, or iniquity, he is incapable of discharging the duties of his office. No judge shall be removed by virtue of this section unless he shall have had an opportunity to be heard in a joint meeting of both Houses, nor unless he shall have received notice of the proceeding, with a statement of the cause or causes alleged for his removal, at least twenty days before the day on which action is taken. Such notice may be given only upon the vote of a majority of the members of each House present. In case of removal, a statement of the cause or causes of removal shall be entered upon the journal of each House.

Comment. This section is section seventeen of the present Constitution, prescribing the grounds and the method for removing judges from office. It supplements the method of removal by impeachment, which is provided for in another part of the Constitution and applies to officials generally. This section has been largely redrafted in order to specify more definitely the particulars of the procedure. The following changes will be noted: (a) The provisions in the present Constitution apply to judges generally. The redrafted provisions apply only to judges of the Supreme Court of Appeals and circuit judges, since the method for removal of summary judges is prescribed in section thirteen of this draft. (b) Instead of providing for “the concurrent vote of both houses”, which may be ambiguous, provision is made for “a vote of two-thirds of the members elected to each House of the Legislature, each House voting separately.” (c) The provision for “an opportunity to be heard in a joint meeting of both Houses” is newly added by the present draft. (d) Also new is the provision that notice of a pro-
ceeding for removal "may be given only upon the vote of a majority of the members of each House present." This is designed to guard against an interpretation, possible under the present Constitution, that a single member of either House may bring about a proceeding for removal of a judge.

Sec. 12. Clerks of Circuit Courts. The voters of each county shall elect a clerk of the circuit court, whose term of office shall be six years. His duties and compensation and the manner of removing him from office shall be prescribed by law. He may be required by law to perform duties in addition to those pertaining to his office as clerk of the circuit court. When a vacancy shall occur in the office, the circuit court or the judge or judges thereof in vacation shall fill the same by appointment until the next general election. If the vacancy shall not be filled within ten days, then it shall be filled by the Governor by appointment. In any case in respect to which the clerk shall be so situated as to make it improper for him to act, the said court shall appoint a clerk to act therein. The clerks of said courts in office when this article takes effect shall remain therein for the term for which they were elected, unless sooner removed in the manner prescribed by law.

Comment. This section is section eighteen of the present Constitution, dealing with the election, terms of office, compensation, duties and removal from office of clerks of the circuit courts. The following changes have been made: (a) The third sentence, "He may be required by law to perform duties in addition to those pertaining to his office as clerk of the circuit court," has been added. This sentence has been added primarily in order that there shall be no doubt that the Legislature shall have power to require clerks of the circuit courts, where deemed advisable, to act as clerks of the proposed summary courts or as clerks of county courts. (b) The fifth sentence has been added, requiring the Governor to fill by appointment a vacancy in the office of circuit clerk, if the vacancy is not filled by the circuit court, or the judge or judges thereof within ten days. This provision is intended to operate when two or more judges of a court can not agree upon an appointment, a situation which may arise under the revised article permitting more than one judge to preside over a single court.

Sec. 13. Summary Courts. The Legislature shall establish in each county in the State a summary court. The Legislature shall determine the number of judges to be elected for each summary
court and may provide for the election of one or more judges to preside over the summary courts of two or more contiguous counties. Each summary judge shall be elected by the voters of the county or counties in which he shall preside. Each of the judges so elected shall hold his office for the term of four years, unless sooner removed in a manner prescribed by this Constitution. No person shall be entitled to hold the office of summary judge unless at the time of his election and during his continuance in office he be a resident of the county or of one of the counties for which he is elected. The minimum age requirement for a judge of the summary court shall be twenty-five years, but nothing herein contained shall be construed as requiring that a summary judge be a lawyer. A summary judge shall be commissioned by the Governor, shall receive such salary, allowance and mileage as may be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected, and shall be paid, in the manner prescribed by law, by the county or counties for which he shall have been elected. Except as provided by law, no judge, during the term of his office, shall practice the profession of law; nor, except as provided by law, shall he hold any other office than that of judge, or accept any appointment or public trust, under this or any other government; nor shall he, during his continuance in office, be eligible to any political office, or become a candidate for any elective office or nomination thereto, except a judicial office; and the violation of any of these provisions shall vacate his office. A summary judge may be removed from office by the Supreme Court of Appeals when from age, disease, mental or bodily infirmity, or intemperance, he is incapable of discharging the duties of his office. The procedure for such removal shall be prescribed by law. Any judge against whom a proceeding for removal from office is to be instituted shall, prior thereto, receive reasonable notice of the cause, or causes, alleged for such removal.

In those counties where there shall be more than one summary judge, the Legislature shall, until action is taken by the Supreme Court of Appeals, make such provision for the distribution, assignment and conduct of the business of such court as shall promote and secure the convenient and expeditious transaction thereof. A summary judge shall not be absent from his official duties except as may be prescribed by law. Provision shall be made by law for the conduct of the business of a summary court in cases where it is improper for a summary judge to act, or when he is absent, or
when, for any reason, he cannot exercise the jurisdiction of such court, and for filling a vacancy in the office of summary judge.

The jurisdiction of a summary court shall extend throughout the county, shall be uniform for all counties of the State, and shall be subject to such regulations as to the venue of actions and the counties in which process may be executed or served on parties or witnesses as may established by law. Times and places for holding such court may be regulated by law, but, in the absence of such regulation, such court may be held at any time and anywhere within the county.

Summary courts shall have such jurisdiction, original or appellate, in criminal matters as may be prescribed by law. In criminal cases, the procedure may be by information or warrant of arrest, without presentment or indictment by a grand jury. They shall have original jurisdiction in all civil actions at law wherein the amount in controversy or the value of personal property in controversy, or the aggregate of such amount and value, exclusive of interest and costs, shall not exceed five hundred dollars, except such actions as may be excluded from their jurisdiction by law; and in actions of unlawful detainer of real estate when the title thereto is not in controversy.

Appeals or writs of error shall lie from the judgments of a summary court to the circuit court of the county, and writs of error shall lie from the Supreme Court of Appeals to judgments of a summary court, in such cases and in such manner as may be prescribed by law.

No judgment of a summary court in any action involving real estate or any right pertaining thereto shall bar the title of any party or any remedy therefor; and no person shall be put in jeopardy of life or liberty for a felony in such court.

A trial jury in a summary court shall consist of six jurors.

Comment. This section establishing and regulating the proposed summary courts is new. It has no specific relation to any provisions in the present Constitution, except that it is a substitute for the provisions relating to justices of the peace. Hence there are no changes to discuss. However, a brief analysis of the provisions and an expansion upon the remarks heretofore made in the general summary may not be without profit.

There shall be a summary court in each county. As in the case of circuit courts, provision may be made for more than one judge to preside over a summary court; but, contrary to the pro-
vision applying to the circuit courts, the number of judges is not required to be in proportion to the population of the counties. Such a limitation is deemed unnecessary in the case of summary judges, since the fact that their salaries must be paid by the counties would seem to be a sufficient insurance against a demand made by any county for an unnecessary number of judges. In order to meet the necessities of small and sparsely populated counties, provision is made "for the election of one or more judges to preside over the summary courts of two or more contiguous counties." A summary judge must be at least twenty-five years old and a resident of the county, or one of the counties, for which he is elected. He is not required to be a lawyer. His salary, allowance and mileage will be fixed by the Legislature and will be paid by the county. His emoluments shall not be increased or diminished during his term of office. The prohibition of increase of the judge's emoluments during his term of office is contrary to the provisions relating to judges of the Supreme Court of Appeals and circuit judges. The differentiation is based on the fact that the summary judge's term of office is relatively short, being only four years, and hence that he is not so likely as other judges having a longer term of office to suffer from a change in economic conditions. The summary judge is placed under the same restrictions as to nonjudicial activities as are the other judges under section ten, except that the Legislature may permit a summary judge to practice law. Likewise, a summary judge may be removed from office on the same grounds prescribed for removal of other judges under section eleven; but he will be removed by the Supreme Court of Appeals, and not by the Legislature.

The same provision as in the case of the circuit courts is made for regulation by the Supreme Court of Appeals of the distribution and conduct of the business of a summary court in counties having more than one judge. There being no terms of court permitting the summary judge to take a vacation between terms, the Legislature is given power to provide when the judge may be absent, and to provide for the conduct of his court when he is disqualified or for any reason can not act in his official capacity.

The jurisdiction of the summary court shall extend throughout the county and he may hold court at any time and at any place in the county, except that the Legislature may specifically prescribe the times and places for holding court. The Legislature is given
power to fix the venue of actions and to prescribe the counties in which process may be served upon parties and witnesses.

As already noted in the general summary, the summary court shall have such jurisdiction in criminal matters, original or appellate, as may be prescribed by law. However, its appellate jurisdiction in criminal matters would be rather meager, since there is no trial court below it having cognizance of criminal trials except the police court, and the following section provides that appeals from the police court shall be to the circuit court. Hence the appellate criminal jurisdiction of the summary court would be confined to such subsidiary matters as applications for admission to bail which may be made before an officer or person under the provisions of section sixteen of this draft. As we have already noted, the summary court will have jurisdiction in actions at law where the amount in controversy, exclusive of interest and costs, does not exceed five hundred dollars; and it also has jurisdiction in actions of unlawful detainer of realty when the title to the realty is not in dispute. However, it has no jurisdiction to try felonies or the title to real estate. If there is a trial by jury, the jury shall consist of six jurors.

It has already been noted in the general summary that judgments of a summary court may be reviewed by appeal or a writ of error in the circuit court, or by a writ of error in the Supreme Court of Appeals, as the Legislature may provide. However, it seems doubtful that the Legislature will deem it expedient to provide for a review in any case by a writ of error.

Article III, section four, of the Constitution provides "No person shall be held to answer for treason, felony or other crime, not cognizable by a justice, unless on presentment or indictment of a grand jury." The summary court will exercise approximately the same jurisdiction in criminal cases that the justices of the peace exercise, having no jurisdiction to try felonies, and it would seem equally undesirable to require a presentment or indictment by a grand jury in cases to be tried in a summary court, many of which would involve only petty misdemeanors. In order to insure that the Legislature shall have power to dispense with a presentment or an indictment in such cases, it is provided that, "In criminal cases, the procedure may be by information or warrant of arrest, without presentment or indictment by a grand jury." It will be noted that this provision does not require that the procedure shall in any case be by information or warrant of arrest. It merely permits the
Legislature to prescribe such a method of procedure. The Legislature would have power in any case to require an indictment as a prerequisite to prosecution. There would seem to be no greater opportunity for prosecuting a person in a summary court without an indictment, under this provision, than there is for so prosecuting him before a justice of the peace under the present Constitution.

Sec. 14. Municipal Courts. The Legislature may provide for the establishment in any incorporated city, town or village of a municipal, police or mayor’s court, which shall have jurisdiction to enforce municipal ordinances, subject to appeal to the circuit court. All such courts heretofore established shall, until otherwise provided by law, remain as at present constituted insofar as their jurisdiction to enforce municipal ordinances is concerned, but any other jurisdiction now exercised by such a court shall cease with the expiration of the term of office of the judge thereof.

Comment. This section, providing for police or mayors’ courts, is new. Its provisions are perhaps not necessary in order to give the Legislature power to establish courts for the purpose of enforcing municipal ordinances, since the power to establish municipalities would seem to include the power to establish such tribunals. However, since the provisions of section nineteen, Article VIII, of the present Constitution, dealing with courts of “limited jurisdiction”, refer to the establishment of the latter courts in cities, towns and villages, and these provisions have been eliminated from the present draft, it is deemed advisable to add the present section in order to prevent any controversy as to whether the omitted provisions were inserted in the present Constitution partly in order to provide for what are commonly called police courts, or mayor’s courts, and whether the omission thereof would deprive the Legislature of power to establish such tribunals.

Sec. 15 Jurisdiction and Terms of Office of Superseded Courts, Judges and Justices; Transfer of Causes. The terms of office of all justices of the peace and constables, elected or appointed, and qualified and serving at the time of the adoption of this article, are hereby extended to and including the thirty-first day of December, in the year one thousand nine hundred forty-two. A vacancy appointment of a justice of the peace or constable, made after this article is adopted, shall terminate on the thirty-first day of December, in the year one thousand nine hundred forty-two. No justice of the peace shall hold office after the thirty-first day of December
in the year one thousand nine hundred and forty-two; nor shall a judge of an inferior court of record of limited jurisdiction elected to office in the year one thousand nine hundred and forty hold office after the thirty-first day of December in the year one thousand nine hundred and forty-four. Otherwise, the adoption of this article shall not affect the term of office, or the jurisdiction during such term, of a judge of any inferior court of record of limited jurisdiction in office, or elected to office, at the time when this article takes effect, or the jurisdiction of such court during such term of office; or the term of office, or the jurisdiction during such term, of any justice of the peace in office, or elected to office, at such time. All actions, suits and proceedings pending in any inferior court of record of limited jurisdiction in any county at the time when the jurisdiction of such court shall cease with the expiration of the term of office of the judge thereof shall be transferred to the circuit court of the county and be prosecuted therein as if originally instituted in such circuit court. Whenever the jurisdiction of any justice of the peace shall cease with the expiration of his term of office, all matters then pending before him shall be transferred to the summary court of the county, if it has jurisdiction thereof; otherwise to the circuit court of the county. After such transfer, such matters shall be disposed of in the summary court or the circuit court as if originally pending therein.

Comment. This section is new. Its object is to fix the time for termination of the jurisdiction of the courts which have been abolished and to provide for the transfer of their business to the summary courts and the circuit courts. Matters pending in the intermediate courts will be transferred to the circuit courts. Matters pending before justices of the peace will be transferred to the summary courts, if they have jurisdiction; otherwise, to the circuit courts. This means that most, if not all, matters pending before justices of the peace will be transferred to the summary courts, depending upon what criminal jurisdiction the Legislature shall give to the summary courts.

The dates selected for termination of the jurisdiction of the intermediate courts and justices of the peace were adopted on the assumption that the revised article would be submitted to the Legislature for action at the regular session in 1939; would be submitted to the voters for adoption at the general election in 1940; and that the Legislature at the regular session in 1941 (or at an extraordinary session, if deemed advisable) would enact statutes to
carry it into effect at the end of the year 1942. Consequently, the jurisdiction of justices of the peace will cease at the end of the year 1942. However, two independent considerations have made it seem advisable to continue the jurisdiction of the intermediate courts until the end of the year 1944 or longer. It has been the general policy throughout therevision not to deprive any person elected to office before adoption of the amended article of his office until the expiration of his term. Consequently, any judge of an intermediate court elected to office before the year 1940 (the date of adoption of the amended article) will continue in office, and his court will continue to function, until the end of his term of office, although it may extend beyond the end of the year 1944. However, if a judge of an intermediate court is elected to office in the year 1940, he will have become a candidate for the office aware of the impending amendments of the Constitution, and will be disappointed in no expectations with reference to the length of his term of office. The term of office of judges so elected has been made to terminate at the end of the year 1944 in order that the termination shall coincide with the regular election of circuit judges, thus making it possible, if necessary, to elect additional circuit judges for regular terms to take care of the litigation formerly conducted in the superseded courts.

Sec. 16. Issuance of Writs, Warrants, and Process; Admission to Bail. The Legislature may designate courts, tribunals or officers who shall have the power to issue such writs, warrants and other process as may be prescribed by law; may provide for the selection of other persons for the purpose of exercising such powers; and may specify before what courts, tribunals, officers, or persons such writs, warrants or other process shall be returnable. The Legislature may also designate courts, tribunals, or officers who shall have the power to admit persons to bail and may provide for the selection of other persons for the purpose of exercising such power. The powers mentioned in this section shall be exercised under such regulations as shall be prescribed by law; but no person exercising such powers shall be compensated therefor on a fee basis.

Comment. This section is new. It permits the Legislature to appoint courts, tribunals, officers or persons who shall have the power to issue such writs, warrants and other process as may be prescribed by law and to admit persons to bail. These functions in the past have been largely performed by justices of the peace,
who are abolished by the present draft. It is conceived that, if only the circuit and summary courts and judges are permitted to issue warrants of arrest and other writs, it may be found that the apprehension of persons accused of crime may be delayed or hampered, and persons may be able to avoid the consequences of attachment writs and distress warrants; and that, if only such agencies are permitted to admit persons to bail, there may be undue delay, and the liberty of persons entitled to be admitted to bail may be unduly violated, because of the lack of ready access to an authority who may admit to bail. The present section is intended to give power to the Legislature to provide substitutes for justices of the peace for the performance of such functions, if deemed expedient. It will be noted that, for the performance of these duties, the Legislature has power to designate any existing court or official, which may be all that is necessary. However, if necessary, it may appoint persons who are not otherwise officials for such purposes.

Sec. 17. Parts of Common Law Effective; Matters Pending in Circuit Courts. Such parts of the common law and of the laws of this State as are in force when this article goes into operation, and are not repugnant thereto, shall be and continue the law of the State until altered or repealed by the Legislature. All civil and criminal suits and proceedings pending in the circuit courts of this State shall remain and be prosecuted in the circuit courts of the counties in which they are pending.

Comment. This section is section twenty-one of the present Constitution without change, except that the word "former" has been omitted before the words "circuit courts" first occurring in the second sentence. It continues the jurisdiction of the circuit courts as at present constituted for the prosecution of all matters pending in them at the time of adoption of the revised article. The latter provision, relating to jurisdiction of the circuit courts, may avoid troublesome questions. For instance, without this provision, it might be questioned whether a circuit court, after adoption of the revised article, had lost jurisdiction of all cases pending in it in which the amount in controversy was two hundred dollars or less.

The next three sections relate to the county courts, commissioners of the county courts, and their powers and duties.

Sec. 18. County Courts. Except as otherwise provided in this
article, there shall be in each county in the State a county court composed of three commissioners. Two of said commissioners shall be a quorum for the transaction of business. Four regular sessions of said court shall be held in each year, at such times as may be fixed and entered of record by the said court. Provision may be made by law for holding special sessions of said court.

Comment. This section is section twenty-two of the present Constitution, prescribing the number of commissioners of a county court, the number necessary to constitute a quorum, and the time and number of sessions of the court. No substantial changes have been made.

Sec. 19. County Commissioners. The commissioners shall be elected by the voters of the county and shall hold their office for the term of six years, except that, at the first meeting of said commissioners, if all shall have been elected at the same time, they shall designate by lot, or otherwise, in such manner as they may determine, one of their number who shall hold his office for the term of two years, one for four years, and one for six years, so that one shall be elected every two years. No two of said commissioners shall be elected from the same magisterial district. If two or more persons residing in the same district shall receive the greater numbers of votes cast at any election, then only the one of such persons receiving the highest number shall be declared elected, and the person residing in another district who shall receive the next highest number of votes shall be declared elected. A commissioner in office at the time when this article takes effect shall remain therein until the expiration of his term of office, unless sooner removed in the manner provided by this Constitution. Said commissioners shall annually elect one of their number president. Each commissioner shall receive such salary as may be prescribed by law and no commissioner shall receive for his services, other than such salary, any reward, compensation or benefit out of public funds; nor shall he be interested in any contract with the county.

Comment. This is section twenty-three of the present Constitution. It deals with the election, terms of office and compensation of commissioners of the county court. The following changes have been made: (a) Near the beginning of the section, the words "if all shall have been elected at the same time" have been added to the provision requiring the commissioners to determine by lot which of them shall hold office, respectively, for terms of two, four, and
six years. If this clause should not be added, it would be necessary to eliminate the provision entirely, since it would be inconsistent with the continuation in office of incumbent commissioners for the respective terms for which they have been elected. However, as modified, it may still serve a practical purpose, as, for example, when a new county should be created and it would be necessary to elect all the commissioners of its county court at the same time. (b) The provisions at the end of the section requiring the commissioners to be compensated solely by salaries and forbidding them to have any interest in a contract with the county have been newly added.

Sec. 20. Powers of County Courts. The county courts, through their clerks, except as may be otherwise provided by law, shall have the custody of all deeds and other papers presented for record in their counties, and the same shall be preserved therein, or otherwise disposed of, as prescribed by law. They shall, under such regulations as may be prescribed by law, have the superintendence and administration of the internal police and fiscal affairs of the county, including, where such functions are not required by law to be performed by some other agency, the establishment and regulation of roads, ways, bridges, public landings, ferries and mills, and shall have authority to lay and disburse county levies; but no license for the sale of intoxicating liquors in any incorporated city, town or village shall be granted without the consent of the municipal authorities thereof first had and obtained. They shall, in all cases of contest, judge of the election, qualification and return of their own members, and of all county and district officers, subject to such regulations, by appeal or otherwise, as may be prescribed by law. Such courts may exercise such other powers, and perform such other duties, not of a judicial nature, as may be prescribed by law. Such tribunals as have been heretofore established by the Legislature and are now in existence under and by virtue of the thirty-fourth section of the eighth article of the Constitution of one thousand eight hundred and seventy-two, for police and fiscal purposes, shall, until otherwise provided by law, remain and continue as at present constituted in the counties in which they have been respectively established, and shall be and act as to police and fiscal matters in lieu of the county court created by this article until otherwise provided by law. And, until otherwise provided by law, such clerk as is mentioned in the twenty-second section of this
article shall exercise any powers and discharge any duties heretofore conferred on, or required of, any court or tribunal established for judicial purposes under said article and section of the Constitution of one thousand eight hundred and seventy-two, or the clerk of such court or tribunal, respectively, respecting the recording and preservation of deeds and other papers presented for record.

Comment. This section, dealing with the powers and duties of the county courts, is section twenty-four of the present Constitution. The following changes have been made: (a) Near the beginning of the section, before enumerating the powers and duties of the county court, the clause "except as may be otherwise provided by law" has been added. This clause has been added in order to harmonize the present section with section twenty-four, permitting the Legislature to establish another tribunal to act in lieu of the county court. (b) In the second sentence, power of the county courts to establish and regulate roads, ways, bridges, etc., has been qualified by adding the clause "where such functions are not required by law to be performed by some other agency." This qualification has been added in order to reconcile the present section with the "Good Roads Amendment." (c) The present draft eliminates all provisions now in the corresponding section of the present Constitution relating to the exercise of jurisdiction by county courts and tribunals created in lieu thereof in matters of probate, the appointment and qualification of personal representatives, guardians, committees, curators, and the settlement of their accounts, and in all matters relating to apprentices. These provisions have been omitted because section twenty-one, following, deals with jurisdiction in such matters.

Sec. 21. Jurisdiction in Matters of Probate, Etc. Jurisdiction in all matters of probate, the appointment and qualification of a personal representative, guardian, committee, or curator, and the settlement of their accounts, and in the matter of apprentices, shall be in such courts or tribunals and the clerks thereof as may be prescribed by law, such jurisdiction to be exercised by such courts, tribunals or clerks, respectively, to the extent and in the manner to be prescribed by law; but, until the Legislature shall provide otherwise, jurisdiction in all such matters shall remain in the county courts and the clerks thereof, under such regulations as are now or may be hereafter prescribed by law. Should jurisdiction in such matters be changed, provision shall be made by law
for the transfer of all such matters then pending in the county courts to the courts or tribunals to which such jurisdiction shall have been transferred, and such disposition shall be made of records and papers in the offices of clerks of the county courts relating to matters of probate, the appointment and qualification of personal representatives, guardians, committees, and curators and the settlement of their accounts, and in the matter of apprentices, as shall be prescribed by law.

Comment. This section is new, although it in effect is a substitute for the provisions just mentioned as eliminated from the preceding section. Likewise, its provisions for the transfer of pending matters, records and papers, although relating to a different subject matter, serve a purpose similar to the purpose served by section twenty-five of the present Constitution, which provided for the transfer of common-law actions pending in county courts when those courts were deprived of jurisdiction in such cases, and which section has been omitted from the present draft as having served its purpose. As already noted in the general summary, under this section, jurisdiction in all matters of probate, the appointment and qualification of a personal representative, guardian, committee, or curator, and the settlement of their accounts, and in the matter of apprentices, has been left in the county courts, as provided in the present Constitution, until the Legislature shall change the jurisdiction. However, under this section, it is within the power of the Legislature to transfer this jurisdiction to the summary courts or to the circuit courts, and their respective officers, or to divide it among the county courts, the summary courts, and the circuit courts, or any two of them, and their respective officers. If the jurisdiction should be changed by the Legislature, provision is made for the transfer of matters pending in the county courts, and also of records and papers. It will be noted that the provisions are broad enough to permit transfer, if the Legislature so enacts, not only of records and papers in pending matters, but also of all past records in the county clerks' offices pertaining to these particular matters, so that all the records—past, present and future—will be found in the same office.

Sec. 22. *Clerk of the County Court.* Except as otherwise provided by law, the voters of each county shall elect a clerk of the county court, whose term of office shall be six years. His duties and compensation and the manner of his removal from office shall be
prescribed by law. The clerks of said courts now in office shall remain therein for the terms for which they have been elected, unless sooner removed therefrom in the manner prescribed by law.

Comment. This section is section twenty-six of the present Constitution, relating to the election, term of office, duties, and compensation of clerks of county courts. The only change made is addition of the clause "Except as otherwise provided by law" to the first sentence requiring election of such clerks. This change is made in order to insure that the Legislature shall have power to dispense with election of a county clerk and to require some other official, for instance, the clerk of the circuit court, to perform the duties of clerk of the county court. This might be desirable in counties where there is not sufficient business in the county clerk's office to claim the full time of an official.

Sec. 23. Districting of Counties. Each county shall be laid off into districts, not less than three nor more than ten in number, and as nearly equal as may be in territory and population. The districts as they now exist shall remain until changed by the county court.

Comment. This section is section twenty-seven of the present Constitution, relating to division of the counties into districts. No change has been made except to eliminate the language relating to justices of the peace.

Sec. 24. Re-formation of County Courts. The Legislature shall, upon the application of any county, reform, alter or modify the county court established by this article in such county, and, in lieu thereof, with the assent of a majority of the voters of such county voting at an election, create another tribunal for the transaction of the business required to be performed by the county court created by this article; and in such case, all the provisions of this article in relation to the county court shall be applicable to the tribunal established in lieu of said court. Any such tribunal now established, or which shall be established, shall continue to act in lieu of the county court until otherwise provided by law.

Comment. This section is section twenty-nine of the present Constitution, empowering the Legislature to establish tribunals in lieu of the county courts. No substantial changes have been made in the present draft.

Sec. 25. Vacancies in Offices. Vacancies in the office of a commissioner and in the office of clerk of the county court in any
county shall be filled by the county court of the county until the next general election. If there be at the same time in the same county more than one vacancy in the office of commissioner, such vacancies shall be filled by the Governor by appointment until the next general election.

Comment. This section is section thirty of the present Constitution, providing for the filling of vacancies in the offices of justices of the peace and of clerks and commissioners of county courts. The following changes have been made: (a) The language relating to justices of the peace and their office has been eliminated. (b) The provision in the present Constitution for filling all vacancies in the office of commissioner by the county court is not practicable in its operation in the event of more than one vacancy at the same time in the same county. If two vacancies should occur at the same time, as in the case of removal from office, only one commissioner would be left, while section twenty-two of the present Constitution (section eighteen of the present draft) requires two commissioners as a quorum for the transaction of business of the county court. Moreover, if three vacancies should occur at the same time in the same county, there would then in no sense be a county court in that county capable of acting for the time being. Wherefore, the present draft provides that, if there be more than one vacancy in the same county at the same time, the vacancies shall be filled by the Governor by appointment.

Sec. 26. Office of Constable Abolished. The provisions of section thirteenth of article six and the provisions of sections two and seven of article nine of this Constitution, to the extent only that they provide for the office of constable, are hereby repealed after the thirty-first day of December in the year one thousand nine hundred and forty-two.

Comment. This section is new, although it supersedes the provisions of section thirteenth, Article VI, and the provisions of sections two and seven, Article IX, of the present Constitution, to the extent that those provisions provide for the office of constable. It will be noted that this section does not forbid legislative establishment of the office of constable, but merely dispenses with it as a constitutional office.

No attempt has been made to call attention to parts of the present Constitution omitted from the redraft where the omissions do not modify the present operative effect of the Constitution.
example, section thirteen, enumerating the counties in each judicial
circuit, has been omitted as superseded by statutes enacted under
constitutional authority; and section twenty, prescribing immunity
for persons participating in the Civil War, has been omitted as
having served its purpose.

The substantial amendments made by the Legislature to the
Interim Committee's draft are as follows: (a) Addition of the
fifth sentence in section twelve, requiring the Governor to fill by
appointment a vacancy in the office of circuit clerk, if the vacancy
is not filled by the circuit court, or the judge or judges thereof
within ten days. (b) Omission from the end of the first sentence
in section thirteen of the requirement that a summary court shall
be a court of record. (c) Addition to the first paragraph of section
thirteen of the clause "but nothing herein contained shall be con-
strued as requiring that a summary judge be a lawyer". (d) Addi-
tion of the first two sentences to section fifteen, for the purpose of
extending the terms of office of justices and constables incumbent
at the time when the revision is adopted to the end of the year 1942.