

## COMMENTS

## THE JUDICIAL COUNCIL ACT

One of the most immediate problems facing the legal profession is that of more effective judicial administration. Few will dispute the proposition that our courts are impeded by heavy and onerous procedural details, with the result that their work is often tediously delayed, inefficiently performed and expensively conducted. Many legal thinkers of high repute insist that the chief reason for this is the want of power by the courts to free themselves from the fetters of codes of procedure imposed by legislative enthusiasm.<sup>1</sup>

In some states, legislative restriction upon the courts in procedural matters is guarded against by insuring to the judiciary the rule-making power by constitutional provisions.<sup>2</sup> The efficacy of such provisions is witnessed by the decrease in delay of court work and the elimination of many unwieldy handicaps of the statutes.<sup>3</sup> It is insisted by some that no constitutional problem of separation of powers is actually involved in this question,<sup>4</sup> but some states have deemed constitutional amendment necessary to confer the power to make rules of procedure upon the courts.<sup>5</sup>

The judicial council act passed by the legislature of North Dakota in 1927 is a gratifying step to relieve the courts of the burdens of procedural difficulties. The act varies from the model judicial council act submitted by the American Judicature Society<sup>6</sup> in that the rule-making power is not included. Thus the judicial council acts primarily in an advisory capacity, so far as actual reform in procedure is concerned. Its duties are "to make a continuous study of the organization, rules and methods of procedure and practice of the judicial system of the state, of the work accomplished and of the work produced by the system, and its various parts, to the end that procedure may be simplified, business expedited and justice better administered."<sup>7</sup> Just how this is to be done is indicated by the requirement that the council is to "submit to the governor . . . each even numbered year a report upon the work of the various branches of the judicial system of the state," together with the provision that "the council may recommend to the governor or to the legislative assembly such measures as it shall deem advisable and may from time to time submit for the consideration of the supreme court suggestions regarding rules of practice and procedure."<sup>8</sup>

That the council is something more than a mere figurehead is assured by the provisions for compulsory processes for obtaining witnesses and evidence at its hearings,<sup>9</sup> and that it is intended to be a serious undertaking is indicated by the creation in the act itself of the bureau of statistics for the purpose of gathering and preserving information relative to crime, criminal prosecutions and civil litigation.<sup>10</sup>

<sup>1</sup> See Pound, *Rule-Making Power of the Courts*, 12 *AM. B. ASS. J.*, 599 (1926).

<sup>2</sup> For example, the Constitution of Michigan, Art. VII, sec. 5.

<sup>3</sup> See, eg., Judge Webster, in 10 *J. OF THE AM. JUD. SOC.*, 148, (1927).

<sup>4</sup> See Pound, *supra*.

<sup>5</sup> See Judge Paul, in 10 *J. OF THE AM. JUD. SOC.*, 78 (1927).

<sup>6</sup> See 6 *J. OF THE AM. JUD. SOC.* 102 (1922).

<sup>7</sup> Judicial Council Act, sec. 5.

<sup>8</sup> *Ibid.*, Sec. 8.

<sup>9</sup> *Ibid.*, Sec. 6.

<sup>10</sup> *Ibid.*, Sec. 7.

The council is composed of the chief justice who acts as chairman, all judges of the supreme and district courts of the state, one county court judge chosen by the supreme court, the attorney general, the dean of the law school of the state university, the chairman of the judiciary committee of the senate, the chairman of the judiciary committee of the house of representatives, and five members of the bar who are engaged in the practice of law, to be selected by the executive committee of the state bar association.

Both the bar and the legislature of the state are to be congratulated on the passage of the judicial council act for three reasons. First, it is a distinct move toward the solution of the vexing problem of simplifying and correcting the procedural methods which so encumber the courts; second, it is an active step toward bringing the judicial department of government into closer relationship with the executive and legislative branches of the government in the working out of a more perfect administration of justice and law enforcement; third, it is a provision for the systematic and scientific study of a legal problem, to the end that by constant research and observation, results may be obtained which are predicated upon a basis of fact and data acquired from experience, rather than experiments based upon the mere speculation and unfounded idealism of the professional reformer.

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### JOINT ENTERPRISE

Defendant was taking a fellow bank employee to a neighboring town in his car. Both men intended to aid in starting a suit for the collection of one of the bank's notes. The car overturned. *Held*, that since there was no "community of interest in the objects and purposes of the undertaking" nor any "equal right to govern the movements and conduct of each other in respect thereto," the pair was not engaged in joint enterprise.<sup>1</sup>

Among the cases cited by the court *Lothead v. Jenson*<sup>2</sup> and *Cunningham v. Thief River Falls*,<sup>3</sup> rule that the host-guest relationship does not constitute joint enterprise; *Brubaker v. Iowa County*<sup>4</sup> rules that a husband and wife moving to another town with their auto loaded with household goods are not engaged in a common enterprise; *Kysler v. Chi., St. P. M. & O. R. R.*<sup>5</sup> holds similarly as to one taking a family guest to town to mail a letter. In Alabama, however, a joint enterprise was found where two garage men were engaged in driving a new car to a dealer.<sup>6</sup>

The host-guest relationship is generally not sufficient to constitute a joint enterprise.<sup>7</sup> Thus joint enterprise does not exist where a private autoist is taking a group of friends on a picnic.<sup>8</sup> The negligence of the driver cannot be imputed to the passenger where that

<sup>1</sup> *Jessup v. Davis*, 211 N. W. 100 (Neb. 1926).

<sup>2</sup> 42 Utah 99, 123 Pac. 347.

<sup>3</sup> 84 Minn. 21, 86 N. W. 763.

<sup>4</sup> 174 Wis. 574, 183 N. W. 690.

<sup>5</sup> 111 Neb. 273, 196 N. W. 161.

<sup>6</sup> *Crescent Motor Co. v. Stone*, 211, Ala. 516, 101 So. 49.

<sup>7</sup> *Eads v. Tiede*, 45 S. D. 190, 186 N. W. 825; *Mitchell v. Raymond*, 181 Wis. 591, 195 N. W. 855; *Koplitz v. St. Paul*, 86 Minn. 373, 90 N. W. 794; *Nesbit v. Garner*, 75 Iowa 314, 39 N. W. 516.

<sup>8</sup> *Ameniat Sharon Land Co. v. M. St. P. & S. S. M. R. R.*, 48 N. D. 1306, 189 N. W.