MASON MEMORIAL TABLET

CHARLES M. MASON
DEAN OF NEW JERSEY
LAW SCHOOL FROM NINE
HUNDRED AND TEN
UNTIL NINETEEN HUN-
DRD AND TWENTY SEVEN
AN INSPIRING TEACHER
AND A FAITHFUL FRIEND

JUNIOR LECTURE ROOM
Second Floor of the Library

Broad Street, Newark, New Jersey
History of the New Jersey Court of Errors and Appeals

The present Constitution of the State of New Jersey, adopted in 1844, provides that "the judicial power shall be vested in a Court of Errors and Appeals in the last resort in all cases as heretofore." It provides further that "the Court of Errors and Appeals shall consist of the Chancellor, the Justices of the Supreme Court, and six judges as a major part of them." What was the scope of this court's jurisdiction as contemplated by the words, "cases as heretofore"? Was the unique composition of this court a spontaneous invention of the framers of the Constitution, or was it grounded upon tradition? A cursory study of the New Jersey judiciary prior to the adoption of the Constitution of 1844 will reveal the answers to these questions.

Before the appointment of a royal governor in 1703, the people of the New Jersey province had formed courts for themselves under the proprietors. In 1675 the General Assembly of East Jersey established and created several lesser courts and provided for appeals to be taken to the governor and council, and from there, in the last resort, to the King of England. In West Jersey a similar system was created, about the same time, with an appeal to be taken to the General Assembly, and from there, in the last resort, to the King of England.

In 1702, when the proprietary governments of the Jerseys were surrendered to Queen Anne, Lord Cornbury was appointed the first royal governor and was granted power and authority, with advice of his council, "to erect and establish" such courts as were deemed fit and necessary. In 1704 Lord Cornbury issued an ordinance establishing the law courts of New Jersey upon English lines, referring to the English courts for the purpose of defining the jurisdiction and prescribing the practice of the courts of the province. The Court of Chancery was established in 1709, the ordinance declaring that the governor and his council should constitute the court.

At this date it would seem that in civil and criminal actions appeal could be taken to the governor and council, and from there, in the last resort, to the King. But no appeal could be taken from Chancery, of which court the governor was chancellor, except directly to the King.

The only substantial alteration made in this organization of courts between the years of 1705 and 1776, was that made in 1770 by Governor Franklin by royal commission, whereby all chancery powers were vested in the governor alone without council. With the organization of the state government in 1776, the Constitution adopted in that year confirmed the Court of Appeals (as it was then known), constituted of the Governor and Council of Seven, and provided that it should be of "last resort in all cases of law, as heretofore." Thus no provision was made for an appeal to be taken from Chancery to the Court of Appeals, the right of appeal to the King having, of course, been cut off by the Rebellion.

In 1799 provision was made, by legislative enactment, for an appeal to the Court of Appeals from decisions of Chancery. By this enactment the Court of Appeals became the court of last resort in all cases in equity as well as in
law. It was maintained that this enactment was unconstitutional, but apparently the contention was given little recognition, for the broader words of the Constitution of 1844 describing the jurisdiction of the Court of Errors and Appeals—"in all cases as heretofore"—have been held to contemplate both cases in law and equity.

A statute of 1869, granting to the Court of Errors and Appeals the right to hear appeals from the Prerogative Court, caused the court some embarrassment; for it appears that prior to 1844 there existed no provision for an appeal to be taken from the Prerogative Court to the Court of Appeals, nor did the Constitution of 1844 supply such a provision. The statute was held constitutional, however, as not expiring an inherent power of the Prerogative Court, namely, the power to issue final decrees, and hence not within the prohibition placed upon the legislature to alter or abolish a constitutional court. Thus the jurisdiction of the Court of Errors and Appeals to hear appeals in the last resort in all cases has developed in three stages: First, in law actions from the provincial ordinance; secondly, in equity actions by the statute of 1799; thirdly, in actions in the Prerogative Court by the statute of 1869.

By virtue of provincial ordinances and the Constitution of 1776, as has been shown, the governor and his council constituted the court of last resort, and the governor alone constituted the Court of Chancery. But the Constitution of 1844 separated the executive, legislative, and judicial departments of government and thus made it impossible for the governor and senate to act as the court of last resort and the governor ineligible to sit as chancellor. Tempering their powers of invention with their respect for a traditional institution, the framers of the Constitution of 1844 produced the present Court of Errors and Appeals with its unique personnel. The Chancellor and six lay judges are simply a survival of the governor and council. The justices of the Supreme Court constitute the remainder of the court.

WILLIAM RYAN.

Justice Kaliisch

Judge Samuel Kalisch

"What is this mystery that men call death?
My friend before me lies; in all our breaths
He seems the same as yesterday. His face
So like to life, so calm, bears not a trace
Of that great change which all of us so dread.
I grieve on him and say: He is not dead,
But asleep; and soon he will arise and take
Me by the hand. I know he will awake
And smile on me as he did yesterday.
And blessed be the gentle soul who said:
Some kindly deed to do; for loving thought:
Was warp and woof of which his life was wrought.
He is not dead. Such and forever live
In boundless measure of the lives they give.

"Mystery." by Bell.

"The heritage of his noble character, the stimulation of his superb culture, the influence of his great service, the magic of his fine name will be ours forever. Indeed, as we approach the ideal of justice and realize the need of ordering and regulating our lives by tried standards and tested laws, the inspiration of his life will be intensified and augmented as a priceless factor in the movement toward human welfare."

—Rabbi Feiner.

"Here is this lovely place.
Quiet he lies.
Cold with his sighs free
Treaded to the shone;
"It is another great one dead.
All you can say is said."

—"Before Sunset," Austin Dobson.