

DELEGATE SCANLAN: I hope so, but if not, I hope we can give him that privilege.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: Mr. Chairman, I ask this in the context of the adoption this morning of the local government article, which drew a distinction between the word "law" and the words "public general law." Is it not correct it is the intention of the Committee on the Judicial Branch in using the word "law" throughout our recommendation that we mean by that "public general law"?

DELEGATE MUDD: That is entirely correct.

Being mindful of that discussion this morning, we may require some further consideration of that and possible amendment of this article.

THE CHAIRMAN: Delegate Macdonald.

DELEGATE MACDONALD: Mr. Chairman, calling your attention to sections 5.08 and 5.10, what were the disadvantages, in the Committee's thinking, of allowing functional divisions in these two courts to be established by either rule or by law?

DELEGATE MUDD: You mean making it optional or concurrent with the legislature and with the courts?

DELEGATE MACDONALD: Precisely. Especially in view of the last section whereby you provide that when the General Assembly has the power and when the court has the power by rule that the last enactment shall prevail.

DELEGATE MUDD: Yes.

DELEGATE MACDONALD: Especially in view of the history whereby there has been very little conflict between General Assembly and Court of Appeals in its rule making authority.

THE CHAIRMAN: Delegate Clagett, do you still have a question?

DELEGATE MUDD: I did not answer Delegate Macdonald.

THE CHAIRMAN: Sorry; I thought the last was an observation rather than a question.

DELEGATE MACDONALD: I was clarifying.

DELEGATE MUDD: Our view in response to that was that this was peculiarly

within the authority that we thought might more appropriately be exercised by the court in its rule making power through a standing committee that is always available to consider matters of this nature. We believed that these functional divisions might be more usefully availed of and made better to accommodate the needs by rule making power than through a public general law.

THE CHAIRMAN: Delegate Macdonald.

DELEGATE MACDONALD: Do you see any real disadvantages in giving the General Assembly the same power by law?

DELEGATE MUDD: No. I just think it is more flexible and can be more readily brought to accommodate the need through rule making power; but personally I have no serious objection to concurrent power in that field.

THE CHAIRMAN: Delegate Clagett.

DELEGATE CLAGETT: Delegate Mudd, was it discussed by your Committee or in the Committee that when a superior court judge was not present in his county but had been assigned, let us assume for the moment, to some other jurisdiction to relieve a caseload there that a district court judge located in that same county or in that district would be available to sign orders such as injunctive orders or probate matters, or things of that kind? If so, how would that be accomplished?

DELEGATE MUDD: It could be accomplished by two means. One, the legislature should prescribe concurrent jurisdiction at the two-tier level, then recourse might be had to the judge of either court. On the other hand, the court by rule could provide for assignment of judges, which, as I understand it, is contemplated to be either laterally or from a lower or higher tier. It could be accomplished in either or in both ways.

THE CHAIRMAN: If there are no further questions—

Delegate Koss.

DELEGATE KOSS: Mr. Chairman, I apologize for prolonging your ordeal. Also, we are going back to an area that has been discussed.

I would like to know what is the critical element in the term "judicial power" that would prohibit the General Assembly from eroding the court system as it is outlined here?