

# The Supreme Court of Texas

By S.A. Philquist, Clerk of the Supreme Court\*

**A**lthough created by the Constitution of the Republic in 1836, the Supreme Court of Texas was not organized until January 13, 1840. At its first session there were present Chief Justice Thos. J. Rusk, Associate Justices A.B. Shelby, Wm. J. Jones, John T. Mills, James W. Robertson, and E.T. Branch, and the Clerk, W.F. Gray. The first opinion was written by Judge Wm. J. Jones, and was styled *Hunter & Hyde versus Bernard Oelrich*. The case was appealed from the District Court of Brazoria County, where it was tried in 1837, and was brought by Oelrich to recover the value of a horse, which he alleged to be worth \$350.00. The defendants, inn-keepers, detained the horse for tavern charges.

According to a news item which appeared in the *Austin City Gazette* on January 15, 1840, the Supreme Court was organized and held its first sessions "at the house belonging to Major A. Brigham," Treasurer of the Republic, located "in the lower part of the city."

Prior to 1892 the Supreme Court was an itinerant court. During the time that Texas was a Republic the Supreme Court met at Austin and Washington, and one session, that of June, 1842, was held at Nacogdoches. From the organization of the State, in 1846, to 1851 court sessions were held at Austin only; but from 1851 to 1892 the Court met once each year at Austin, Galveston, and Tyler. The Austin term was held during the fall of the year; the Galveston term during the winter; and the Tyler term during the spring.

The Court never had a permanent location until it moved into its present quarters on the third floor of the Capitol. In 1841 and for several years thereafter sessions were held in the Travis County Court House, then located on West Fourth Street, between San Antonio and Guadalupe Streets, in the City of Austin. In 1848 the Legislature "reserved the building occupied by Mr. Conner, in the City of Austin, for the use of the Supreme Court." In 1852 it provided that "the building now occupied by the Supreme Court, be reserved and set apart for the use of said Court." In 1871 an act was passed providing that "the building situated on the Capitol grounds and now being improved for the use of the Supreme Court" should be used exclusively by the Court. That building, built of stone, was known as the "Supreme Court Building," was located just south of what is now the Plaza Hotel, and was occupied by the Court when the Capitol burned on the afternoon of November 9, 1881. After the fire the Supreme Court building was razed, and the offices of the Court were moved to the fourth floor of the William Breuggerhoff Building

on Congress Avenue at Tenth Street, and remained there until they were moved into the temporary Capitol.

Prior to 1876 the Supreme Court was the only appellate court in the State, and had jurisdiction of both civil and criminal cases, and determined questions of fact as well as of law. The present Constitution, as adopted in 1876, created two appellate courts: the Supreme Court, having jurisdiction of civil cases only, and the Court of Appeals, having jurisdiction of criminal cases. The judicial amendment to the Constitution of 1892 took from the Supreme Court jurisdiction to decide questions of fact, changed the name of the Court of Appeals to the Court of Criminal Appeals, and authorized the Legislature to create Courts of Civil Appeals as intermediate courts of appeal in civil cases. Pursuant to that authority, eleven courts of Civil Appeals have been created.

During the days of the Republic the personnel of the Court consisted of the judges of the eight district courts—who, by virtue of their offices, were Associate Justices of the Supreme Court—and of a Chief Justice appointed by the Congress. Since December, 1845, when Texas became a State, the Supreme Court has consisted of a Chief Justice and two Associate Justices, except from 1866 to 1869, and from 1873 to 1876, when it was composed of five Justices.

The Congress of the Republic appointed all judicial officers. From 1845 to 1850, and again from 1861 to 1866, the members of the Supreme Court were appointed by the Governor of the State. Since 1866 they have been elected by the people; as they also were from 1851 to 1861.

During the period of the Republic there were four Chief Justices of the Supreme Court: James Collinworth, John Birdsall, Thomas J. Rusk, and John Hemphill; and there were twenty-five district judges who at different times were Associate Justices. The first Supreme Court of the State was composed of Chief Justice John Hemphill and Associate Justices Abner S. Lipscomb and Royall T. Wheeler. Since Statehood, forty-six men have served as Judges including eleven who were appointed by the military authorities during the reconstruction regime following the Civil War. The following judges have served on the Court longest: John Hemphill, 18 years; Royall T. Wheeler, 18 years; Abner S. Lipscomb, 10 years; O.M. Roberts, 11 years; George F. Moore, 11 years; John W. Stayton, 13 years; R.R. Gaines, 25 years; T.J. Brown, 22 years; F.A. Williams, 12 years; Nelson Phillips, 9 years; Thos. B. Greenwood, 17 years; William Pierson, 14 years; and C.M. Cureton, 14 years.

The increased amount of litigation coming before the Supreme Court, due to the rapid growth of industry and increase in population, made it utterly impossible for three justices to hear and determine the hundreds of cases placed on the Court's docket annually. To aid the Court to hear and determine causes the Legislature, first in 1879 and again in 1918, created the Commission of Appeals. As now organized, the Commission of Appeals is divided into two sections, designated Section A and Section B, each consisting of three judges; who, prior to 1930, were appointed by the Governor, but since that time have been appointed by the Justices of the Supreme Court.

Causes of unusual importance are retained by the Supreme Court and are argued orally before the three Justices and the six Judges of the Commission of Appeals; while all other cases are referred to one or the other of the Sections, where they are submitted and argued. However, no opinion is ever rendered by the Court until it has been carefully examined by each Judge, and discussed by the three Justices and the six Judges of the Commission of Appeals en banc.

The Supreme Court at this time is composed of Chief Justice C.M. Cureton, Associate Justice John H. Sharp, and Associate Justice Richard Critz. The members of the Commission of Appeals are: Judges J.D. Harvey, S.H. German, and J.E. Hickman, composing Section "A," and Judges G.B. Smedley, W.M. Taylor, and A.B. Martin, composing Section "B."

Cases filed in the Supreme Court are placed on one of three dockets: the cause docket, the application docket, or the motion docket.

For the past several years the motion docket has been kept up to date, except for a very few motions in cases involving difficult questions.

Since March, 1935, the Court has been up with its application docket, save for a very small number of applications which presented questions requiring extensive investigation, or awaiting decision in another and controlling case.

The cause docket is the only one which is not up to date. However, the Court is making splendid progress in the reduction of cases pending on said docket, as will be shown by the following comparison:

On June 30, 1935, there were pending 428 cases. On July 28, 1937, there were pending on said docket 295 cases; showing a reduction for said period of 133 cases.

The sources of cases put on the cause docket are applications for writ of error granted, certified questions from the Courts of Civil Appeals, and cases originally filed in the Supreme Court—such as mandamus, habeas corpus, prohibition, etc. From January 1, 1935, to July 28, 1937, a period of little over two and one-half years, there were added to the cause docket from these sources 452 cases, or about 180 cases a year. During the same period the

Court disposed of 602 causes, or took off the cause docket 150 cases more than had been docketed thereon. Thus it is seen that the Court is rapidly catching up with its cause docket. It is estimated, based upon the above comparison, that the Supreme Court will be up with its cause docket within the next two or three years.

The following is a summary of work done by the Supreme Court and the Commission of Appeals for a one-year period from July 22, 1936, to July 28, 1937:

Judgments affirmed, or reformed and affirmed .....	20
Judgments reversed and remanded, or remanded in part or remanded with instructions .....	35
Judgments of Courts of Civil Appeals affirmed .....	48
Judgments of Courts of Civil Appeals reversed and that of the trial court affirmed .....	31
Judgments reversed and rendered .....	21
Judgments affirmed in part and reversed in part .....	7
Agreed judgments entered, appeals dismissed .....	27
Certified questions answered .....	23
Certificates dismissed or returned to the Courts of Civil Appeals ....	2
Mandamus granted .....	3
Mandamus refused .....	1
Petitions for writs of prohibition granted .....	2
Writs of habeas corpus cases decided .....	7
Writs of error granted .....	157
Writs of error refused .....	167
Writs of error dismissed W.O.J. ....	402
Writs dismissed on motion or otherwise .....	7
Restraining orders granted or dissolved .....	3
Motions for rehearing of causes overruled .....	105
Motions for rehearing of causes granted .....	4
Rehearing of applications overruled .....	213
Rehearing of applications granted .....	1
Motions to advance, granted 7, overruled 8, dismissed 2 .....	17
Miscellaneous motions passed on .....	34
Motions for mandamus granted .....	5
Motions for mandamus overruled .....	15
Motions to issue mandate without payment of costs .....	9
Motions for writs of prohibition .....	8
Applications for writs of habeas corpus .....	3
Motion to correct judgment .....	1
Causes referred to Section "A" .....	107
Causes referred to Section "B" .....	84
Causes withdrawn from Commission of Appeals .....	4
Total number of orders entered .....	1,573
Written opinions .....	241

\* Assisted by John H. Johnson, Briefing Clerk.

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