

DELEGATE MUDD: Yes, such as probate or juvenile, in that area.

THE CHAIRMAN: Any further questions?

Delegate Dukes.

DELEGATE DUKES: Under the functional division provision for district court could you also set up a functional division that would deal in the nature of small claims court, so that the division would deal with informal rules, informal procedure, limited amount as well as category of type of claims?

DELEGATE MUDD: You mean functional division that was not bound by the rules of the district court?

DELEGATE DUKES: Many of our present peoples' courts have relatively informal rules, so that a man who claims his neighbor owes him \$150 can try his own case.

Could you set up a division of the district court to do this?

DELEGATE MUDD: No. The functional division of the district courts would have to abide by the same rules within its limited function as the district courts.

THE CHAIRMAN: Delegate Mudd, as I understand the question of Delegate Dukes, it is two-fold. One, under your plan could a district court be set up so that a function would be small claims, as distinguished from a type of case? That is the first question.

DELEGATE MUDD: Yes. I see no problem there.

THE CHAIRMAN: The second part of his question was, could the court, under its rule making power, authorize the use of more informal procedures in such a small claims court?

DELEGATE MUDD: Offhand I would say no, but the rule making power possibly could so provide.

THE CHAIRMAN: Delegate Dukes.

DELEGATE DUKES: Would I conclude, if your answer in the negative is correct, that there is no provision for such a court under this article?

DELEGATE MUDD: No provision for what?

DELEGATE DUKES: For the small claims court with an informal system. Could there be none under this article?

DELEGATE MUDD: Absolutely yes, there could be. I am not prepared to say it would be operated under rules different from those of the court of which it was a functional division.

DELEGATE DUKES: Delegate Bamberger's last question, as I recall, dealt with whether or not it was the basic intention to have functional divisions as a function of rule making rather than legislative. You felt the courts were in a better position to determine when a functional division was necessary, is that right?

DELEGATE MUDD: Yes.

DELEGATE DUKES: And the Chair, I believe, stated a question in response to Delegate Willoner's inquiry about any difference if there was any between judicial power under section 5.01 and judicial function, I suppose in a quasi-judicial body such as an administrative agency. My question is this: Could the legislature set up a body—take probate courts, you mentioned that—set up a body which is called a court and upon which is conferred commission or probate jurisdiction, have judges appointed by the governor, called presiding officers but have no function other than judicial in any reasonable sense, and remove all probate functions from the judicial arm?

DELEGATE MUDD: I think the answer to that is no, because presumably there would be a conflict of jurisdiction. If the legislature in the exercise of the power delegated to it to prescribe the jurisdiction of the four-tier system prescribes probate jurisdiction in the superior court, that would be the end of it.

THE CHAIRMAN: Delegate Dukes.

DELEGATE DUKES: What is the effect of the article on the present tax court?

DELEGATE MUDD: It is not a court, as I understand it.

DELEGATE DUKES: What are its functions other than judicial?

DELEGATE MUDD: You mean the court operated out of the department of assessments and taxation?

DELEGATE DUKES: The court is called a tax court, yes, sir.

DELEGATE MUDD: My understanding is it is not a court in our definition of it.

THE CHAIRMAN: Delegate Dukes.

DELEGATE DUKES: Am I not correct that in decisions which deal with quasi-