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THE MINNEAPOLIS COURT OF CONCILIATION IN OPERATION

The bill for the act creating the conciliation court of Minneapolis, as drawn up by the special committee of the State Bar Association appointed for that purpose,¹ in the form presented to the legislature of 1917, was undoubtedly the most carefully worked out plan yet attempted for transplanting the Norwegian conciliatory procedure in the settlement of petty disputes to American soil. It was hardly to be expected that the bill as drawn would be passed without modification by the legislature. The idea of adversary procedure as the sole and indispensable method of administering justice is so deeply ingrained in the legal profession, trained under Anglo-Saxon traditions, that any suggestion that small disputes can be judicially determined by bringing the parties together through the advice and persuasion of an officer of the law seems not only unpractical, but even repulsive. The outline plan of the bill as presented is set forth in an article in I MINNESOTA LAW REVIEW, page 107. The other small debtors' courts existing in this country are primarily courts for the expeditious settlement of small disputes by summary procedure of an adversary character. Their conciliation features are rather incidental and wholly dependent upon the attitude of the judge in the conduct of his court. The State Bar Association's bill, however, boldly proposed that the new court, which was indeed but a branch of the municipal court, should be primarily a court of conciliation and only secondarily a small debtors' court.

With this end in view the bill provided in substance that the conciliation court should have jurisdiction co-extensive with that of the municipal court; that as to all causes involving amounts in excess of $100 application to the court should be purely voluntary and the powers of the court wholly confined to the effort to bring the parties to agreement; and that causes involving amounts not exceeding $100 (except actions of unlawful detainer and ac-

¹ See Minnesota State Bar Association report 1916, p. 256, 1917, p. 293.
tions in which the provisional remedy of attachment, replevin or garnishment was involved in the inception of the action), must be first brought in the court of conciliation. Of those causes required to be brought in the conciliation court two classes were made. Over the first class, involving sums exceeding $50 but not exceeding $100, the court was to have only conciliatory powers. If the parties could not be brought to agreement and judgment entered thereon, the case was to be dismissed without prejudice. The plaintiff, upon exhibiting a certificate showing that the cause had been before the conciliation court and dismissed, could then bring his action in such other proper court as he might select. In the second class of cases, those involving sums not exceeding $50, the bill gave the court power, in case the parties could not be brought to agreement, to determine the cause summarily, with provision for removal to the regular municipal court in case the plaintiff was entitled to a jury trial.

The legislature rejected the compulsory conciliation feature. The act as passed gave the conciliation court jurisdiction co-extensive with that of the municipal court, but made it wholly optional in all cases whether the plaintiff should bring his case, however small, in the conciliation court or take it directly to the municipal court. The act allowed anyone having a claim within the jurisdiction of the municipal court to bring it before the conciliation court, but as to causes involving more than $50 thus optionally brought before the court of conciliation it had only conciliatory powers, and was obliged to dismiss the case without prejudice if the parties could not be brought to agreement. According to the provisions of the act, the court had the powers of summary disposition as proposed in the bill over those cases involving not more than $50 which might be optionally brought before it.

From this statement it is apparent that the conciliatory features of the original bill were, to a large extent, eliminated from the act as passed. The result has been to confine the business of the court almost exclusively to cases involving not more than $50. A few disputes involving larger sums have been brought before the court and settled by agreement of the parties, but up to the present time this voluntary conciliation feature has assumed little importance.

Despite the mutilated and weakened form in which the act emerged from the legislature, the success of the court almost from

2 Minnesota Laws 1917, Ch. 263.
The first day on which it was opened for business has outrun the expectation even of its most hopeful well-wishers. Quartered in a large court room, massively furnished, the court is clothed with that outer semblance of dignity and authority which undoubtedly has its influence upon the minds of litigants in reducing to their proper proportions the petty quarrels which they bring there for settlement. The judge's chambers, opening into the court room, are ample, and the office of the clerk is conveniently located nearby. The course of procedure, as worked out in practice, is very much the same as was anticipated. Practically all claims are filed in the clerk's office where the clerk, himself trained in the law, is always ready to lend a sympathetic ear to the infinitely varying stories of mingled wrong, folly and misfortune, and to advise the complainants what next step they should take, if any, to secure redress. Many of their complaints are beyond the power of any court to remedy, and such would-be plaintiffs are advised to go home and avoid similar mistakes or follies in the future. The clerk estimates that nearly one thousand complainants have refrained from filing claims upon being advised that they were clearly entitled to no remedy within the jurisdiction of the court. The clerk also frequently lends a helping hand when the complainant, as often happens, is too ignorant or inexperienced to fill out the simple form, stating merely the names and addresses of the parties, and the nature and amount of the claim, which takes the place of a declaration or complaint. The clerk then sets a day for the hearing. This is usually one week distant unless he learns that an earlier or later day will be more convenient to the parties. The summons, immediately sent to the defendant, usually by mail, but sometimes by telephone, notifies him of the filing of the claim and the day and hour set for the hearing, and informs him that judgment by default will be entered against him if he does not appear. The informality in the service of summons does not work any real injury since the very liberal discretion possessed by the judge in dealing with defaults enables him to protect defendants in those rare cases in which the mail goes astray. The fee for setting aside default judgments is rarely taxed.

In those cases where the plaintiff makes a sworn claim that he has been wrongfully deprived of the possession of personalty, the judge does not hesitate, where the needs of justice require such action, without requiring any bond whatever, to send a bailiff to take possession of the property to await his further order.
Of the cases thus filed little more than one-half ever come up for hearing. The remainder are settled before hearing on the advice of the clerk or of the judge in chambers, or through the mere influence of the very harmless-looking summons to appear in court. Thus of the 3,500 cases disposed of up to April 23rd last, 1,745 are recorded as settled out of court.

Hearings are now usually set for three days in the week. When a case is called the parties advance to the bar, removed only about six feet from the judge's bench. Sometimes they bring witnesses with them, but usually they do not. From this point the proceedings are best described by reporting a typical case. After identifying the parties the judge asks the plaintiff what the dispute is about, and the following colloquy takes place:

Plaintiff: "Has this fellow got any right to fire me from my job at the end of the week without notice after I had worked seven months for him and left a good job to come to him?"

Judge: "Were you hired by the week?"

Plaintiff: "Yes, I was, but I was fired just because he got a new foreman who didn't like me. I am a good workman and I've got a right to a week's notice."

Judge: "Did the defendant promise to give you a week's notice?"

Plaintiff: "No, not just so, but that was my understanding."

Judge: "Could you have left at the end of a week?"

Plaintiff: "I always give three days' notice before I quit."

The judge then asked the defendant what he had to say about the matter, and was told that defendant's foreman concluded that the plaintiff was an unsatisfactory workman; so he "paid him up to the end of the week and let him out." The judge then, in kindly tones, explained to the plaintiff what were his legal rights under a contract of employment; how he must stipulate for notice if he wished to have it; and dismissed the parties. The clerk wrote "dismissed" on the calendar and the case was disposed of, all in just five minutes.

Something over twenty-five per cent of the cases that come to a hearing are settled by agreement of the parties upon the advice of the court, and thus disposed of without judgment. In the remainder of the cases set for hearing judgments are entered either after summary trial, or upon default.

Most of the judgments entered are satisfied by payment to the clerk or directly to the judgment creditor. Only 83 transcripts of judgments have been issued for docketing in the office.
of the clerk of the municipal court in order to enable the plaintiffs to sue out writs of execution.

The cases for the most part involve disputes about wages, rents and small claims of infinitely varying origin. Many of them are petty, and some are squalid and discreditable, but all of them are very important to the participants. The greater number of contested cases turn upon issues of fact, though in some cases the quarrel is due to different theories of the parties as to their legal rights. In one case at least a litigant with flashing eyes placed her claim of right to remove furniture from the plaintiff's house squarely on the constitution, though she failed to indicate on what constitution she relied, or what particular provision was applicable. The non-technical and conciliatory method of disposing of these questions of fact may be best shown by reporting briefly a typical case.

A prosperous looking man was sued for $7.05, alleged to be due for work done upon his automobile. The defendant stated that he had told the plaintiff's foreman to renew the grease in his machine, while the plaintiff asserted that the defendant had told the foreman to change the grease and do anything else that he might find necessary, and that the foreman, finding a certain spring broken, had replaced it with a new one. The defendant, with considerable show of indignation, denied authorizing any work save the greasing. He said he was perfectly willing to pay for the work he had authorized, but he was fully determined he would not pay for a job he had never ordered; that he was tired of having repair men run up bills on him. He asked that the case be continued, and the foreman brought in as a witness. But the judge thought otherwise. Remarking that it would be a pity to use up more of the time of useful workmen on such a trifling dispute, by a few brief questions he got the defendant to admit that the work had been done, that the charge made was not particularly unreasonable, and that in his opinion the foreman had acted in good faith in doing the disputed work. "Well," said the judge, "don't you think you would better pay the whole bill, and waste no more time over the matter?" A rather sheepish grin spread over the defendant's face as he replied, "I guess you are right, Judge," and forthwith paid over the amount.

Another brief report will indicate the court's total disregard of the formal rules incident to our accustomed adversary procedure, as well as the method of disposing of conflicting testimony as to questions of fact. The plaintiff appeared with her
daughter, the desire for combat apparent in every gesture, especially in the forward thrust of her chin. There had evidently been some words between the parties. The belligerent plaintiff needed no invitation from the judge to tell about the trouble. In her opinion the defendant was a cheap skate. She had hired plaintiff's daughter to look after her children, promising to pay her $2.50 a week, but hadn't lived up to her promise, and now owed plaintiff $14.00, which sum, she averred, the defendant was trying to beat her out of. The defendant, a neatly dressed young matron of quiet bearing, evidently found her part in the trial embarrassing and painful. She stated that she had hired the daughter at $2.00 a week, and not $2.50; that she had worked for her seven weeks and had been paid all that was due her excepting $5.80, which she had always been ready to pay. Here the daughter broke in to deny that she had received the amount stated by the defendant, saying that she had received a smaller sum and had worked for a longer period. At this point it developed that the daughter was of full age and that all dealings with reference to the hiring and payment of wages had been with the daughter. This left the combative mother entirely out of the case. The judge might have told her as much; he might even have dismissed the case on the ground that it had been brought by the wrong plaintiff. But it is very doubtful whether any of the parties, particularly the mother who wanted to be in the fight at the finish, would have appreciated the principles of law that might have justified the judge in so determining the case, especially in view of the fact that the daughter, according to the mother's frank statement, was not very bright and had to "have somebody stick up for her." The judge, calmly ignoring such an irregularity, in his mind substituted the daughter as the party plaintiff and proceeded to soothe the belligerent mother and reason with the embarrassed defendant. When finally he said to the defendant, "Since you find yourself mixed up in this quarrel, don't you think you had better pay the girl $10.00 and settle the whole matter?", the defendant acquiesced at once and the parties left the court room, it is hoped, without any disposition to continue their quarrel.

Another case will illustrate the curious questions that are brought before the court and the informal way of dealing with them. Plaintiff had leased a certain furnished house from
the defendant. Trouble had arisen in regard to the furniture, the defendant threatening to remove it. The plaintiff had then brought an action in the district court and had secured a judgment declaring that under the lease she was entitled to possession of the furniture, and an order restraining the defendant from interfering with the plaintiff's possession. The defendant, however, was convinced that the decision of the district court was wrong. Acting on this belief she proceeded to remove the furniture by force. The plaintiff might have instituted contempt proceedings in the district court, but instead she brought the matter to the court of conciliation. The defendant was highly indignant and demanded that the judge should read the lease and decide the case in accordance with justice and right and the terms of the lease, which she insisted the district court had not done. She found it difficult to accept the principle of res judicata as the judge endeavored to explain it, so he proceeded to enter judgment. The plaintiff knew the second-hand purchase value of the furniture in question but did not know what would be its rental value for the remainder of the term. Having gotten a description of the furniture the judge, by telephone, called up a person engaged in the business of selling and renting such furniture, satisfied himself as to what was its rental value and told the defendant that she might return the furniture or pay $18.00 as its rental value. She decided that she would return the furniture, although it was manifest as she left the court room that she still had no proper appreciation of the doctrine of res judicata.

A final case may be given as indicating another phase of the court's work. The plaintiff, a well dressed and rather kindly looking man, was suing the defendant for $48.00 unpaid rent. The defendant explained that he had been ill for three months, that he had not yet fully recovered his strength and that he had gotten behind with all of his bills and he didn't see how he could pay the plaintiff's house rent. When questioned by the judge as to whether he had a job, he replied in discouraged tones that he wasn't strong enough to do heavy work, that the pay for light work was very small and that it wouldn't be much use anyhow as his wages would be garnisheed. The judge then proceeded to encourage him to get the best kind of job he could and to pay off his debts gradually. He told him that he ought to pay the plaintiff, and that he
would see that the plaintiff gave him as much time as was necessary. The defendant said he thought he could pay $10 a month if he wasn't pushed. The judge, however, told him that he thought he had better not undertake to pay more than $8 a month and that he would enter judgment for the $48, payable at the rate of $8 per month. The plaintiff, who evidently did not enjoy the appearance of being an oppressor of the poor, readily assented to this arrangement.

The purely conciliatory jurisdiction of the court over causes involving amounts in excess of $50 has been very little used. The act permits the written agreements drawn up by the parties to such causes under the advice of the judge, to be entered upon the docket as judgments, but in the few cases in which the judge has been called upon to bring the parties to agreement, voluntary settlements have been made in accordance with the agreements reached and no judgments whatever entered. Under the present form of the act it is not to be expected that many cases involving amounts larger than $50 will be brought to the court inasmuch as the judge, in such cases, has no power excepting to give advice, and there is no penalty whatever put upon either of the parties who refuses to settle in accordance with the advice of the judge. If the plaintiff does not like the proposed settlement he can ignore the whole proceeding and bring his action in the appropriate regular court. So, if the defendant is unwilling to consent, the plaintiff must then pursue his appropriate remedy in one of the regular courts, having his trouble for his pains. In the opinion of the writer the provision contained in the Norwegian law requiring a plaintiff, before bringing in a regular court an action that could have been settled in the court of conciliation, to produce a certificate that he had unsuccessfully attempted there to settle it, would result in greatly increasing the number of causes settled by conciliation rather than by the expensive and irritating method of adversary procedure.

The lawyer reading the outlined reports of the typical cases given above may be disposed to say that it is a very rough sort of justice that is administered, and that such justice is dear even at the very low cost entailed by procedure in this court. But it is very evident that the litigants do not entertain any such opinion. In nearly one-half of the 3,500 cases disposed of by the court of conciliation, judgments were entered. In fewer than fifty of these cases was there any ex-
pression of dissatisfaction, and only 8 of them were removed to the municipal court for jury trials.

The fact that the court of conciliation is absolutely free to all complainants naturally made it appear as an attractive agency for the collection of small claims to public utility companies and other concerns that have a large number of customers and a proportionately large number of small claims. Thus upon the establishment of the court the telephone companies, the gas and electric companies, some of the commission merchants and others expressed their intention of dumping all of their small claims into this court for collection without cost. But a rule prohibiting any single plaintiff from filing more than three suits in any month very promptly checked this flood and preserved the court's time and energy for the kind of litigation for which it was intended, that is, the petty causes of the poorer citizens of the community which could not economically sustain the heavy cost incident to adversary proceedings in our regular courts.

It is obvious that the success of such a court as the Minneapolis court of conciliation depends almost entirely upon the qualifications of the judge. The Minneapolis court has been very fortunate in the appointment of Hon. Thomas W. Salmon as its first judge. Judge Salmon's courtesy and patience, his kindly manner and deep sympathy with the misfortunes of the poor, his tact and sound judgment, have enabled him to carry on this kind of judicial work, so new and untried in this country, with gratifying success. Certainly the reproach that justice is only for the rich and prosperous is taken away from the city of Minneapolis.

It is to be hoped that in due course of time the legislature may be induced, by amendment of the existing act, to adopt the plan included in the State Bar Association's bill requiring all litigants making claims not exceeding $100 to bring them first before the court of conciliation, giving to that court the opportunity to bring the parties to an agreement without prejudice to their right to take their causes elsewhere in case of failure to agree. The operation of the court under the present act gives every reason to expect that in a large majority of the cases thus brought up for conciliation agreements would be reached at a very great saving of time to the litigants and of expense to the state.

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