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A PROPOSED COURT OF CONCILIATION

KING John was required to covenant in the Great Charter of 1215 that he would not deny or delay justice to anyone.¹ John and his royal successors found it difficult to live up to this promise. In later times the governments of free peoples have found it scarcely less difficult. Delay in the administration of justice is a source of constant complaint on the part of all suitors in our times as well as in the time of John, and the constantly increasing expense of litigation is a never-ending source of popular discontent. Delay and expense in the litigation of important claims is unfortunate, but in the case of the petty claims of the poor, it often amounts to a practical denial of justice. The movement to establish small debtors' courts "represents an attempt to meet an insistent need and solve a most perplexing problem. It is an attempt to adjudicate causes involving small sums in such an economical manner that genuine and practical justice may result".² It is estimated that at least one-third of all civil controversies that come before our courts cannot stand the expense of a formal trial under our customary procedure.³ The problem is now, and always has been, how to provide for such petty claims a mode of fair trial that will not be so costly as to be economically impracticable.

1. Sec. 40.

2. Eighth and Ninth Reports, Municipal Court of Chicago, p. 128.

3. Ibid.

Very early in the history of the English law, the recognized necessity of providing a less expensive method of determining the petty causes of the poor resulted in the establishment of the Court of Requests, apparently in the reign of Richard II. This court, known as "the poor man's court of equity", existed as a sort of branch of the court of Chancery down to the time of Elizabeth, when it disappeared.⁴ Later it was succeeded by statutory courts bearing the same name and giving remedy in the same class of cases.⁵ These statutory Courts of Requests were established in many of the larger cities of England, and continued in active operation down to 1846, when the re-organization of the County Court, with its more extensive jurisdiction, enabled that tribunal to take over effectively the adjudication of small claims.⁶ The procedure in the small claims division of the County Court has ever since remained very simple, and although the expense is relatively high, since the court is made self-supporting, it nevertheless disposes annually of a very large number of small claims without delay and seemingly to the satisfaction of the petty claimants.⁷

By royal edicts of 1795 and 1797 there were established in Denmark and Norway, then a dependency of Denmark, courts of conciliation which have proved so highly successful in affording inexpensive and speedy justice to the poorer class of suitors, that their fame has spread throughout the world. These royal edicts were confirmed and extended by the Norwegian acts of 1805 and 1824.⁸

The act of 1824 is very elaborate, providing with painstaking particularity for every contingency that might arise, as, for instance, that if a party should appear before the court in a drunken condition, the court should proceed as if he were absent.⁹ The function of the court, however, was simple. It

4. 2 Select Essays in Anglo-American Legal History, 252; 1 id. 694. Note also the Courts of Piepoudre, or "dusty foot" courts. See 3 Bl. Comm. 32.

5. 3 Bl. Comm. 81.

6. 3 Stephen's Commentaries, 321.

7. See excellent article on the English County Courts in 64 Univ. of Penn. Law Rev. 357.

8. For summary statements of the provisions of the Norwegian law, see 68 Atlantic Monthly, 401, (July 1891), 72 id. 671 (Nov. 1893); Tribunals of Conciliation, 10 Wis. Bar Ass'n Rep. 206; Renaud v. State Board of Mediation and Arbitration, (1900) 124 Mich., 648, 83 N. W. 620, 51 L. R. A. 458, 83 Am. St. Rep. 346.

9. Art. 56.

was to secure the attendance of the parties, hear their complaints and answers orally and informally, and seek to bring them to an agreement upon an amicable adjustment of their dispute. If the court succeeded in this purpose, the agreed settlement was entered as a judgment; if it failed, the parties were given a certificate upon production of which their cause would be heard and determined by a regular court. While it is thus seen that under the original act the court could enter judgment only by consent of both parties, by an amendment in 1869 it was empowered to enter judgment in small cases upon the request of either party.

The court of conciliation seems to have developed with almost equal success in Denmark. In France, at the time of the Revolution, conciliation powers were given to justices of the peace, with the result that their courts have continued for over a hundred years to dispose annually of huge numbers of small cases by bringing the parties to an amicable understanding.¹⁰

As early as 1846 the desirability of introducing this system of informal determination of petty claims was urged in New York, with the result that in the constitution adopted in that year a provision was included authorizing the legislature to establish courts of conciliation. The New York legislature seems never to have seriously considered exercising the power thus given, and the provision itself was omitted from the constitution of 1869,¹¹ but at the meeting of the New York Bar Association in 1916 a committee was empowered to prepare a bill authorizing the establishment of a conciliation court.¹²

Constitutional provisions similar to that of 1846 in New York were adopted in Wisconsin in 1847, in Michigan in 1850, in Ohio and in Indiana in 1851, and in North Dakota in 1889. Pursuant to these provisions acts of limited scope and doubtful usefulness were passed in Indiana in 1852 and in North Dakota in 1895.¹³ The Indiana act was repealed in 1865, while that of North Dakota seems to have fallen wholly into disuse.¹⁴

10. Tribunals of Conciliation, 10 Wis. Bar Ass'n Rep. 206, 217.

11. Tribunals of Conciliation, *supra*.

12. 39 N. Y. Bar Ass'n Rep. 307, 309.

13. See Laws N. D. 1895, c. 22.

14. Tribunals of Conciliation, 10 Wis. Bar. Ass'n Rep. 223, 224. For the Michigan Act of 1889, see *Renaud v. State Board of Mediation and Arbitration*, *supra*.

The failure of these efforts to transplant to American soil this European exotic was not surprising. It was hardly to be expected that such a departure from customary methods of judicial procedure would appeal to a people engaged in a vigorous but not very well organized contest with the great American wilderness. Only within the last decade, after the development of great urban communities in this country had abolished pioneer conditions and pioneer methods of thought, has any serious effort been made to put into effect the European practice of providing special informal procedure for the settlement of petty disputes. The first tribunal of such a character established in this country appears to have been instituted by rule of court as a branch of the municipal court of the City of Cleveland in 1912, under the wide powers given to that court by the Ohio Municipal Court Act.¹⁵ The success of the conciliation court in Cleveland quickly attracted interest throughout the country. A similar branch of the Chicago municipal court was established in that city in 1915.¹⁶ In 1912 a general act was passed in Kansas authorizing the establishment of small debtors' courts in any county or city that might determine there was need for such a tribunal. Under this act such courts have been established in several of the larger urban communities of the state, and are reported to be working with marked success.¹⁷ Early in 1915 a general act was passed by the legislature of Oregon requiring that in all district courts there should be established a department for the summary adjudication of small claims.¹⁸ The tribunal established under this act in the city of Portland is also reported to be working successfully.¹⁹

In 1915 bills for the establishment of such tribunals were introduced in Minnesota and Wisconsin, but failed to receive consideration in either state. Another bill for the same purpose, drawn in the careful manner described below, is now pending before the Legislature of Minnesota.

At this point it is desirable to make clear the distinction between courts of conciliation and small debtors' courts. The court of conciliation, of which the best example is that which

15. See Fourth Annual Report, Municipal Court of Cleveland, p. 41.

16. Eighth and Ninth Reports, Municipal Court of Chicago, p. 129.

17. See the amusing account of the Kansas court in *The Outlook*, January 19, 1916, p. 153. See also 22 *Case and Comment* 29 (June, 1915).

18. Oregon Laws, 1915, Chap. 327.

19. See Oregon Voter, Sept. 16, 1916.

has so long existed in Norway, provides primarily machinery for bringing the parties to a dispute together before an official who is recognized by both parties to be competent and impartial, so that they may have a fair opportunity to agree upon a settlement of their differences without the expense and delay incident to ordinary legal procedure, and without the engendering of the animosities that almost invariably arise out of contested suits at law. Psychologists would naturally assume a priori that most persons, especially of the more ignorant classes, would be willing to accept the advice of a trusted public officer in regard to the settlement of any disputes which they might have with their neighbors, and that comparatively few are of such litigious disposition that they will insist upon litigating a claim when they have been informed by such an officer that the claim is without merit. The experience of the Norwegian courts through many years has confirmed this assumption as a matter of fact. Statistics show that a large proportion of all of the causes that come before the Norwegian courts are settled by agreement of the parties. Those few persons who are so determined to litigate their claims that they will not accept the settlement proposed by the court of conciliation, are, of course, allowed to carry their disputes before the regular courts to be disposed of by the tedious and expensive methods of legal procedure.

On the other hand, small debtors' courts, as usually existing in England and this country, are regular courts of limited jurisdiction, whose procedure, though informal and expeditious, is nevertheless adversary. Their judgments may be rendered *in invitum*, and in some jurisdictions are not subject to appeal. The conciliation functions performed by such courts are rather due to the broad discretionary powers given to the judges than to the express provisions of the court rules or statutes under which they operate, although conciliation whenever possible is expressly required of the Cleveland court.

The need for the establishment of a tribunal for the inexpensive and summary determination of small claims in Minnesota, particularly in the larger urban communities, was carefully considered during the year 1916 by the State Bar Association's Committee on Jurisprudence and Law Reform, with the result that that committee recommended to the Bar Association that it should approve the creation of such a tribunal, and that a special committee should be appointed to draft a

bill for an act that would be suited to the conditions and judicial system of the state. The Bar Association acted unanimously upon these recommendations and the special committee, duly appointed in accordance with such action, prepared the bill now pending before the legislature.

Many difficulties were encountered at the outset in the preparation of this bill. In the first place, it was thought highly undesirable to add a new court to the already large number of separate tribunals in the state. This seemed particularly undesirable in view of the growing tendency to consolidate and simplify the organization of courts rather than to make it more complex. It therefore seemed expedient to make use of the existing Municipal Court to meet the needs of the situation. But here was encountered another difficulty in that, while there is a general municipal court act for the state at large, the municipal courts in each of the three larger cities and in some of the smaller ones were organized under special acts. In Ramsey County, justices' courts still exist, while in Minneapolis they have been abolished. It was therefore decided by the committee to make the proposed bill applicable only to the city of Minneapolis, with the hope that if a conciliation court should be established there, the experience gained in the actual operation of an act so limited, would render easier the later drafting of an act of more extensive scope.

Another obstacle encountered was in that provision of the constitution of the state which provides that, "The right of trial by jury shall remain inviolate and shall extend to all cases at law without regard to the amount in controversy."²⁰ This constitutional guaranty made it impossible to provide for a summary final disposition of petty causes and rendered it necessary to provide in all causes an opportunity to litigants to remove them from the conciliation branch of the municipal court to the regular session of the court where a trial by jury can be had. Such a provision undoubtedly complies with the constitutional requirement.²¹

With these considerations in mind, the committee endeavored to construct the bill so as to include the following features

20. Art. 1, Sec. 4.

21. See *Capital Traction Co. v. Hof*, (1899) 174 U. S. 1, 19, S. C. R. 580. 580.

which were deemed essential to the accomplishment of the purpose in mind:

(1) The conciliation court is to be a branch of the municipal court, presided over by an additional municipal judge, to be nominated and elected as conciliation judge.

(2) The conciliation court shall sit every day but Sundays and holidays, and twice a week in the evenings, to accommodate the suitor who cannot leave his work during the day.

(3) The conciliation court is to have jurisdiction of all civil cases not involving more than one hundred dollars, with conciliatory powers only of causes involving more than fifty dollars, and summary powers of adjudication in other causes within its jurisdiction.

(4) In case the parties can be brought by the judge to a voluntary settlement, such settlement, when entered by the judge upon his docket, shall have the force of a judgment, but the judge may order it paid in such installments, and at such times as may seem to him just and reasonable.

(5) If the parties cannot be brought to agreement, if more than fifty dollars is involved, the case is dismissed, and may then, upon exhibit of a certificate of such dismissal, be filed in a regular court having jurisdiction. If not more than fifty dollars is in controversy, the judge will proceed to hear and determine the cause summarily.

(6) When judgment is rendered without the consent of the parties, either party aggrieved may appeal to the regular session of the municipal court, and there be accorded his right to a trial by jury. But such terms are imposed on such appellants as will tend to discourage frivolous and vexatious appeals.

(7) For the purpose of expediting settlements and judgments in such cases, the court is authorized to summon the defendant into court "orally, or by telephone, or by mail, or by written summons".

(8) Attorneys are not allowed to participate in proceedings before the conciliation court.

(9) The proceedings in the conciliation court are entirely without cost to the parties except in certain unusual cases in which the judge may at his discretion award to the prevailing party his disbursements.

There are many other details technically necessary for carrying into effect the main purpose of the bill as above indi-

cated, but they are merely ancillary and need no special consideration.

Brief comment will now be made upon the principal features of the bill in the order in which they are given above.

(1) The wisdom of adapting the municipal courts to the use of the proposed conciliation court is manifest from the considerations already mentioned. It is clear also that since the success of the court will depend very largely upon the peculiar qualifications in temperament, experience, and training of the judge, it is necessary that the people shall select, both at primary and general elections, the person whom they expect to act as conciliation judge, rather than to have one appointed from the regular members of the municipal court to this branch of the court.

(2) The main purpose of the court being to make justice available to the poorer classes of society, especially to the laboring people, it would seem necessary to require that evening sessions should be held to meet the needs of those who cannot leave their employment during the day.

(3) The limit of the jurisdiction of the Kansas and Oregon small debtors' courts is twenty dollars; in Cleveland the limit is thirty-five; in Chicago the jurisdictional limit was originally thirty-five, but experience showed the advisability of increasing that limit to fifty dollars where it now stands. In Minneapolis it would seem that a limit of fifty dollars would be wisely set. In the city of Topeka, Kansas, during the year 1915, the average amount of the separate claims adjudicated by the small debtors' court was less than five dollars. In England the average amount involved in each of the 1,250,000 cases that are determined each year in the small debtors' division of the county court, is less than fifteen dollars.²² The 3,000 cases handled annually in the Minneapolis Legal Aid Bureau involve an average amount of less than ten dollars each.

(4) The power of the judge to arrange for the payment of any judgment entered, whether by confession or after a hearing, by installments or in such other manner as the circumstances of the parties may suggest, has been found most beneficial in practice in other jurisdictions, and should unquestionably be conferred.

(5) If the judge can not succeed in inducing the parties to settle a dispute involving more than fifty dollars, the concilia-

22. 64 *Univ. of Penn. Law Rev.* 358.

tion court can do nothing but dismiss the case, and the parties may then have recourse to their ordinary remedy. In case, however, the amount in controversy does not exceed fifty dollars, the court at once becomes a small debtors' court for the summary determination of the dispute. Thus, strictly speaking, the proposed court is a court of conciliation of causes involving sums between fifty and one hundred dollars, but a small debtors' court as to controversies involving not more than fifty dollars.

(6) The constitutional provision above mentioned, assuring to every person a trial by jury, necessitates allowing either of the parties to a case adjudicated by the conciliation court to remove the case to the regular division of the municipal court, where a trial by jury can be had under the rules of that court. It is to be regretted that these petty causes should be subject to appeal, but certainly the provisions of the proposed act will render petty litigants slow to exercise this right of appeal or removal. It is probable that very few cases will go further than the conciliation court. It is reported that of the 1,123 cases determined by the Portland small debtors' court during its first year, 21 only were appealed.

(7) The extreme informality of the summons authorized in the bill may, and probably will, shock lawyers accustomed to the more formal proceedings of the regular courts, but there seems no doubt that such summons is valid in this state,²³ and it certainly will tend to make it easier for the judge to arrange for hearings with the least possible delay.

(8) The suggestion that attorneys be barred from all proceedings before the conciliation court, will probably excite opposition on the part of even some attorneys in good standing at the bar. Such is the provision in the original Norwegian act and in some of the American acts. It is quite conceivable that there may be some of these petty causes in which the services of an attorney might be really needed, but in that event a re-trial of the case in a court where attorneys may appear can readily be arranged. Therefore there is no real danger of substantial injury to any party to one of these causes through lack of legal advice. So long as the case is in the conciliation court, the interests of both parties will be impartially cared for by the judge. The presence of an attorney,

23. Constitution, Minnesota, Art. 6, Sec. 14; *Lockway v. Modern Woodmen*, (1911), 116 Minn. 115, 133 N. W. 398.

especially of the kind that usually concern themselves with petty suits, would certainly tend to delay the settlement of the case and put the parties in a litigious rather than in an acquiescent state of mind.

(9) In most of the courts of similar character established in other states, small fees are charged. In the English County Courts the fees are proportionately quite heavy; but it seemed wiser to the committee to make justice in such petty causes absolutely free.

The success of small debtors' courts wherever they are properly established has been unquestionable. This becomes manifest upon even a slight consideration of the statistics available. For instance in Norway, in the year 1911, 105,310 cases were brought before the conciliation courts. Of these all were settled or summarily disposed of excepting 12,957 which were referred for trial before the regular courts. In England, the small claims branch of the county courts disposes of about 1,250,000 of these small claims annually. In the year 1913 only about four per cent of the causes came to a formal trial, all the others being settled or summarily determined.²⁴

In Cleveland, in the conciliation branch of the municipal court during the year 1915, 5,208 cases were filed, this number being 98 per cent greater than the number of cases disposed of in 1913, the first year of the court's operation. In addition to the actions filed in the court, some 277 disputes were settled by the agency of the clerk of the court without being placed on the court docket at all.²⁵ It is reported that the small claims branch of the Chicago municipal court, during the past year has disposed of about 15,000 cases. In the little city of Topeka, Kansas, in 1915, some 378 cases were disposed of in the small debtors' court.

This view of the steady march in other states towards a system that will secure justice for the poor as well as for the rich, leads us to hope that by enacting the pending bill for a court of conciliation, Minnesota may make good to every person, however humble, the splendid declaration in her bill of rights: "He ought to obtain justice freely and without purchase; completely and without denial; promptly, and without delay, conformably to the laws."²⁶

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24. 64 *Univ. of Penn. Law Rev.* 358, 365.

25. See *Fourth Annual Report, Municipal Court of Cleveland*, p. 41.

26. *Constitution, Minnesota*, Art. 1, Sec. 8.