Keeping Civil Disputes Out of the Courts

New Methods of Settling Litigation Have Been Adopted by the New York Municipal Judges—A Reform That May Be Widely Extended

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OUR newspapers are filled daily with the record of the war that is engrossing the attention of the world. We read each day the accounts of combat and battles. The cry of peace, is, however, repeatedly and insistently heard. Soon or later peace must come. It may come only after the nations now at war are exhausted and their physical, moral, and financial assets dissipated. Would that some method had been in vogue which would have made possible a peaceful adjustment of such differences as existed!

In its final analysis, a contested litigation is war between the contending parties. A court trial is a battle. The parties are pitted against each other to secure every possible advantage. People who fight are apt to get hurt. This is true whether the fight be on the battlefield or in court. Appreciating this situation, the Municipal Court of the City of New York, the most important court in the United States if the number of people who seek relief be regarded as the proper criterion, has recently adopted a system for the peaceful settlement of disputes between contending parties. The Judges of the Municipal Court of the City of New York have realized that as a people we have entered upon a new economic era. It was necessary to secure a new method of disposing of the great mass of disputes and contentions that ordinarily were brought to court. The result was that rules providing for conciliation and arbitration were adopted recently, pursuant to authority vested in the Justices of the court by the Legislature of the State.

The public, however, is not as yet acquainted with the advantages of the new methods nor of the manner in which they may employ them. I believe the ultimate effect of these new methods in lessening litigation will be appreciable and the example the Municipal Court of the City of New York has established will be generally followed in other jurisdictions.

It may be well to point out the distinction between conciliation and arbitration inasmuch as separate rules have been adopted to cover each of these subjects. Conciliation can occur only where parties, through the mediation of a third party designated a conciliator, voluntarily reach an agreement in respect to their dispute. The conciliator seeks to bring the parties into an accord. He may make suggestions, but the parties themselves must finally agree upon the settlement of the dispute. If they fail to agree, the conciliation proceedings fail. A party cannot be forced to accept the suggestion of the conciliator. He is free to litigate his dispute in the courts in the regular way, or he may consent to an arbitration. In an arbitration proceeding, however, the parties agree in advance to submit their dispute to a third party designated the arbitrator and to be bound by the decision of the arbitrator. The decision of the arbitrator does not depend for its enforcement upon the accord of both parties, once the proceeding is under way. Both parties are bound by the decision of the arbitrator, even though it radically differs from the contention of one of the parties and is in fact displeasing to that party.

Under the rules for conciliation which have recently been adopted by the Board of Justices of the Municipal Court of the City of New York, any person having a claim may apply to the clerk in any district for the issuance of a notice of conciliation. This notice is addressed to the party against whom the claim is asserted and is to the following effect

> John Doe, residing at ———, having presented a claim against you for (say, money loaned,) amounting to —— dollars, you are hereby requested to appear before a Justice of this court at the Court House of the district, Borough of ———, situated at ———, on the —— day of ———, 19—, at —— o'clock, for the purpose of an amicable adjustment of the controversy.

The clerk immediately fixes a date for the hearing and informs the applicant of the date and at once mails notice to the adverse party at the address given by the applicant. At the appointed time the parties are received by the Justice in his private office. The parties are heard informally by the Judge, who endeavors to effect an amicable and equitable settlement of the dispute. Frequently the parties do not know the law which is applicable to their dispute. The Justice may tell them what the law is or perhaps he may make a suggestion for a settlement which may not be in accord with strict rules of law. In taking the statements of parties the Justice is not bound by the rules of evidence which apply in court. He may receive any evidence that seems to him proper. If the parties agree, the Justice notifies the clerk what the terms of the settlement are. The clerk makes a record thereof, but no judgment is entered. It rests with the parties to live up to the agreement of settlement which they have made.

Under the arbitration rules adopted, parties may submit for arbitration any controversy which exists between them, either to a Justice of the court or to any other person upon whom they may agree. Agreements to arbitrate are not at all a novelty. In fact, in England almost all disputes arising out of contracts or between merchants must be submitted to arbitration. This is so, because in the vast majority of written contracts there is included a clause that, before commencing litigation, the parties will submit any dispute arising on the instrument to arbitration. In this country, our courts have held that such a clause is opposed to public policy in that it is not in the public's interests to recognize agreements which tend to prevent a party from having free recourse to the courts. In England, however, the courts have taken a contrary view. It is there held that such a clause is valid and enforceable, and that where a contract contains a clause that before an action may be instituted any dispute arising between the parties must be submitted to arbitration, a party will be defeated who commences a suit without first offering to arbitrate. It may be that the day is not far distant when our courts will follow what I regard as the more progressive view taken by the English courts in regard to the enforcement of this arbitration clause in contracts.

The procedure in the Municipal Court which permits a dispute to be submitted for arbitration to a Justice of the court is a novel one. It overcomes one of the objections which has been urged against the system of enforcing arbitration clauses which require disputes to be arbitrated by a man who perhaps may be inexperienced in that character of work. Thus it has been said that men have greater faith in Judges with their long training in the settlement of disputes and the conduct of hearings thereon than in merchants who bring no such qualification to the task, and that no arbitrator other than a Judge can command the same confidence and respect that a Judge who is known to be independent of the parties does. If parties, however, prefer to have their disputes settled by some other person upon whom they agree, they are permitted to do so under the liberal rules just adopted. Parties having confidence in one Judge rather than in another may submit their dispute to the Judge in whom they have confidence. They are privileged to choose the Judge whom they desire to have pass upon their dispute.

The arbitrator must forthwith proceed to hear the controversy. He is not bound by rules of evidence. He may receive any evidence which seems to him equitable and proper. Either party may be represented by counsel. The rules provide that no record shall be kept of the proceedings before the arbitrator, but this may be waived, and, if the parties prefer, a record may be made by the court stenographer if the proceedings are had before a Judge. If a Justice of the court is arbitrator, the proceedings are absolutely without cost to any party, the rules specifically providing that no expense shall be incurred except upon consent in writing of the parties. The arbitration proceedings in the Municipal Court are in this respect much more advantageous than any arbitration which now exists. In the Supreme Court of New York controversies in dispute may be submitted to an agreed person other than a Justice of the court. A record of the proceedings must, however, be taken by a stenographer employed for that purpose, and the arbitrator is paid $10 for each hearing.

Another and most important rule which has been adopted provides that after the first hearing neither party may withdraw from the arbitration unless both parties consent or the arbitrator directs a discontinuance of the proceedings. One of the greatest defects which now exists in the arbitration proceedings in the Supreme Court is that if the arbitrator at any time indicates an opinion which seems to be adverse to one of the parties to the controversy, that party may as a matter of right terminate the arbitration proceedings by withdrawing from it. Many hearings may have been had and much expense incurred and all for naught if one of the parties chooses to terminate the proceedings. A change has been brought about in this respect by the rule just mentioned. After the hearings are concluded the arbitrator makes his decision in writing and files it, together with any opinion he may render, with the Clerk in the proper district. The Clerk thereafter enters the judgment on this award of the arbitrator, unless the parties agree that no judgment shall be entered.

We have created a new method to make the advice of Abraham Lincoln effective: "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time."

The contested court trial almost invariably leaves one of the parties dissatisfied. Almost without fail the parties to the controversy become and remain enemies. The resumption of friendly relationship rarely occurs. A spirit of animosity and hate is engendered which, as a rule, not even time overcomes. The result of a conciliation or arbitration proceeding is far different. The proceedings are conducted in an impersonal manner conducive to the resumption of friendly relations after the disposal of the dispute. There remains none of the bitterness of a hotly contested trial. The atmosphere of a fight is absent. Relationships suspended by the dispute may very likely be resumed. The dispute may be merely the result of a misunderstanding which a frank and open statement of the parties promptly clears away. Experience in other jurisdictions has demonstrated that a discharged employe may be re-employed or an interrupted business relationship may be resumed where a dispute is adjusted without the bitterness left by a fight in court. A spirit of good-will and friendliness is encouraged in place of a spirit of hostility and enmity.

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