Marquette Law Review

Volume 4
Issue 2 *Volume 4, Issue 2 (1920)*

Article 5

1920

Is it the Duty of a Judge to Encourage Settlements of Cases as they are Called for Trial?

James O'Neil

IS IT THE DUTY OF A JUDGE TO ENCOURAGE SETTLEMENTS OF CASES AS THEY ARE CALLED FOR TRIAL?

EDITOR'S NOTE—In the light of this interesting question which arises during the session of each term of court, it may be of interest to note that our State Constitution expressly provides for Tribunals of conciliation in Article VII, Section 16.

> "The legislature shall pass laws for the regulation of tribunals of conciliation, defining their powers and duties. Such tribunals may be established in and for any township, and shall have power to render judgment to be obligatory on the parties when they shall voluntarily submit their matter in difference to arbitration, and agree to abide the judgment, or assent thereto in writing."

The idea of effecting settlements is not a new one among the lawyers of this country. It has become more or less obsolete through the lack of use, but it perhaps still carries the qualities attributed to it by Lincoln in which he said:

> "Discourage litigation. Persuade your neighbor to compromise whenever you can. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough."

HONORABLE JAMES O'NEIL, JUDGE SEVENTEENTH JUDICIAL CIRCUIT

Does a duty evolve upon the judges to actively urge litigants to settle and compromise cases as they are called for trial on the calendar? Does it compute with the dignity of the court, that a judge shall from the bench interfere just before the trial begins, and press parties and their attorneys to negotiate settlements? Are the results of such a practice beneficial and usually satisfactory to the parties? Is the public saved from much expense? These are questions that are worthy of careful consideration.

When I was a student at college in New York, at the county seat of the county in which I was born, I used often to visit the courts in session. The judge was an old, gray-haired man of a commanding appearance, very stern and austere in manner. I do not remember that he ever made a suggestion to counsel that they should bring their parties together and try to adjust their differences.

While a member of the bar, my principal practice in Wisconsin was before two of the ablest judges who ever sat on the bench in this state, Romanzo Bunn and Alfred W. Newman. I am positive I never heard either one of them at the opening of a case, stop and apply pressure upon the attorneys or the parties to compromise or adjust their differences, thereby saving the expense

of a long trial. But within the past few years many judges are deeming it their duty to try to effect the settlement of civil cases, and thereby lighten the work of the courts, saving cost to the parties and really benefiting them by making friends of those who had been enemies.

I have employed this method with very satisfactory results in the last two years. In the past year I have found that a judge can effect a settlement of a large proportion of civil jury cases by seizing the opportune moment to suggest that it would be wise for the parties to get together, and in a spirit of conciliation seek to avoid the necessity of a trial. In the last six months I have in this way been able to shorten my terms by some weeks. I think that the opportune time is either when the case is called, after the judge has examined the pleadings, has learned the nature of the issues and the amount involved; or after the jury has been sworn and counsel have made their opening statements. A larger proportion of the cases can and ought to be settled. I find attorneys usually favorable to settlements. They often appear to be greatly pleased to have the judge in remarks from the bench urge the parties to compromise their differences. My practice is to ask the parties to retire with their counsel in a friendly spirit, to make reasonable concessions and to consider the expense which a long trial will entail, using every effort to get together. I have often waited for some time before a settlement is made and I recall one case where negotiations proceeded for one-half day.

The results of this practice have in the majority of cases been excellent, although there are failures where the parties are hostile or stubborn. I shall give a concrete example of the practicability of the practice of settlements. Some months ago I had before me a very hotly contested case between two women, involving the title to some turkeys. The amount sued for was small. I made every effort to get the parties to compromise, but failed. It took two days to try the case and then the jury disagreed. The case came on again at the next term of court. The trial again consumed over two days. Finally the women seemed exhausted and the case was adjusted. It cost each of the parties over four hundred dollars, and the public many dollars as well.

There are many cases which must be tried out, but I feel positive that I have succeeded in a considerable proportion of the instances where I have applied the plan which has been described. I can recall cases where remarks having been made from the

bench have led to settlement of cases which would have lasted a week or more. It is my opinion that this practice should be encouraged by the trial judges.

* * *

HONORABLE GEORGE GRIMM, JUDGE TWELFTH JUDICIAL CIRCUIT

As a common thing, when a case is reached, I ask counsel whether they believe the case can be adjusted without a trial, whether any overtures looking to that end have been made by either party, and whether they are willing to talk over the matter with me. Affirmative answer is always made, at least to the last of these questions. Leaving the court room in charge of a bailiff, who understands that he is to maintain order, counsel and I retire to my chambers, where a full statement of the contentions and viewpoints of both parties is elicited from counsel. After that, I am usually able to make suggestions as to what looks to me to be the fair thing to do. It may require modification and much discussion, but if there is any merit at all in the case, a tentative agreement is nearly always reached which is then submitted to and urged upon the clients for acceptance, by their counsel. In a large majority of instances it is at once favorably received, but sometimes I am requested by client or his counsel to satisfy the client's mind as to the fairness or expediency of the proposed settlement.

In no case must the slightest suspicion of coercion on part of the court or judge enter into the negotiation; and unless the trial judge is sure of the complete confidence of his bar that in case a settlement is not reached he can and will be strictly impartial in his decision if the case has to go to trial, he had best keep his hands off altogether—for he will only create more bad blood instead of good will.

If the trial judge looks upon himself as a kind of "superman," too exalted to delve sympathetically into the passions and heartburns of "the common people," or, if he doubts his own ability to remain uninfluenced by a failure of his efforts to secure a settlement, then he had best not "mix in," but go on and try his cases. But if he feels the impulsion of a common brotherhood toward the lowliest, and his conscious desire is to be good, to help, to make peace and re-establish friendly relations, you may rest assured that he sacrifices naught of true dignity by helping