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SIMPLIFYING THE ORGANIZATION OF THE COURTS OF THE STATE*

By Roy P. Wilcox

THE reform of institutions consists, usually, in adapting them to changed conditions. This is largely true in speaking of reform or change in the organization of the courts of Wisconsin. Simplicity of form is the prime requisite. Numerous courts with varying, conflicting, or perhaps, concurrent jurisdiction do not make for high efficiency in administering justice. Judicial effort is wasted. Economy of cost is impossible, so that we may say quite confidently that a multiplicity of courts means failure of efficiency and extravagance in cost. While justice is not a matter of purchase, nor is it, in any sense, a business, there is no good reason why business principles should not be applied to the organization of courts, as well as to the organization of business. The business man has a vision or plan in mind. He organizes his equipment and his personnel, so as to realize his plan with the least of waste and at the minimum of cost to obtain the maximum of results. Our vision, our plan, in the administration of justice, is plain before our eyes. Is our plan and equipment efficient—is our personnel well organized so as to give us, at the minimum of effort and cost, the maximum in realization of the plan which we envisage?

It has become a commonplace, in political and governmental life, that if any self-appointed friend of the millennium, has, more or less clearly stated to him, or more or less clearly thinks of, some wrong which may or does exist, under present conditions, the sovereign and instant remedy is the passage of a new statute by the legislature. A somewhat thorough investigation of the basis of organization of the courts of Wisconsin has led me to the conclusion that the tribunes of the millennium are not alone in this attitude. It seems to have been shared by the lawyers, who have filled the books with special acts, establishing special courts to meet special conditions. The result of this has been to confuse and obstruct, rather than to clarify and assist, the speedy, economical and certain administration of justice.

While I am not of those who believe that it is difficult or impossible to secure results under present conditions, nor necessary, in order to avoid reproach, that the present system of courts should be greatly changed, I am convinced that there is opportunity to improve conditions

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as they are. The goal of lawyers and judges should be the prompt dispatch of legal business. Any system of courts that will reasonably produce this result, has demonstrated that it is a good system. In my opinion, one of the greatest aids to the prompt and efficient administration of justice is the active, intelligent and honest co-operation of the lawyers themselves. It has not been my experience that the trial courts of this state are cluttered up with work. I have found them ready to try cases at any time, and it has never been necessary, in my experience, to submit to intolerable delay because of the condition of trial court calendars. If an attorney will diligently press his case to trial, be ready to present it when opportunity is afforded, it may be disposed of in any county in this state, with the possible exception of Milwaukee, in my opinion, within six months from the time it is commenced. This condition clearly shows that we are not suffering greatly from a faulty system, an overworked bench, or unduly crowded calendars. Nevertheless, it appears to me that there is opportunity left in Wisconsin for simplifying, to some extent, and rendering uniform, the organization and practice in the courts of the state.

Our constitution provides quite a simple system of courts, beginning with the justices of the peace in each town to handle small litigation, criminal and civil; probate courts to dispose of all matters relating to guardianship, wills and estates; circuit courts, with unlimited jurisdiction, to handle all ordinary criminal and civil litigation, including appeals from justice and probate courts, and a supreme court, which is the court of last resort. The legislature was also given power to create municipal courts and inferior courts, with limited civil and criminal jurisdictions.

The greatest transgression against the simplicity of the court organization of the state has arisen under this power of the legislature. Municipal courts have been created all over the state, with all sorts of jurisdictions, criminal and civil, from that equal to a justice of the peace, up to powers and authority co-terminous with the circuit. In addition, a great many county courts have been given certain varying criminal or civil jurisdictions, and police justices have been created in some cities, while, in Milwaukee, a civil court and a district court have been created. It is my notion that there is opportunity for simplifying the organization of the courts of the state by a common sense attempt to standardize the jurisdiction and practice of the many inferior courts which have been created, abolishing some of them, and preventing, if possible, the establishment of any such additional courts in the future. The organization of the board of circuit judges, some years ago, and the recent statutes fixing the powers of the board and its chairman, and

arranging for the assignment of judges to the various circuits of the state, with an appropriation made for the payment of a secretary and all necessary expenses of carrying out the policy of the judges, has greatly improved the efficiency of the circuit courts. It is a pleasure to testify for myself, and I think I voice the opinion of the lawyers generally, that we now have in Wisconsin a very efficient and satisfactory organization of our circuit courts.

I urged the passage, when I was in the legislature some years ago, of an act which would permit actions brought to set aside or reverse the decisions of the Industrial Commission, to be brought in the local circuit court, instead of the circuit court for Dane County, thus relieving that court from a large mass of work which there are no very good reasons for imposing upon it. The only objections to the bill came from the Industrial Commission itself, and inasmuch as these cases are tried practically on the record as made before the Commission, the slight inconvenience of requiring a deputy attorney general or a commissioner to appear in another county is completely outweighed by the fact that for an injured person to be required to bring the action at Madison, frequently amounts to a denial of justice because of the distance and expense involved. The argument that to have such cases all decided by one judge procures uniformity of decision is completely outweighed, to my mind, by the fact that we should avoid concentration of government and decisions of courts in one place, and permit, wherever it is possible, reviews of decisions of the various commissions which are of local interest in the locality chiefly affected by the result. The injured workman, who has been denied compensation, is apt to be very much better satisfied to sit in the circuit court of his own county, and hear his case disposed of by the judge he knows, than to learn, through his attorney, after some delay, that the court, at a remote point in the state, has also decided against him.

If we eliminate the supreme court, which no one cares to attempt to reform, and which does not need it, and the circuit court which has done so much to reform itself, we are left a comparatively limited field for our work of simplifying the organization of the courts. The long, and justly famous courts, presided over by the village justice of the peace, have rapidly been falling into disuse. It sometimes seems as if their day of usefulness had passed. They seem to have been devised with the notion that a small case should be decided by a poor judge, although it frequently is the fact that the small case is more important to the poor man, than the large case to him of ample means. The notion that the quality of the judgment to be applied to a mooted question should depend upon the amount of money involved, seems entirely repugnant to

the proper conception of justice. This matter is, however, quietly taking care of itself, and, as nothing short of a constitutional amendment can do away with the ancient institution of the justice of the peace, it may be better that he should be permitted to lapse into nothingness, undisturbed and unreformed, than to attempt to abolish him by constitutional amendment. The county court and the municipal court seem to me to afford the field in which there may be some legitimate room for simplifying the organization of the courts. A careful examination and checking of the laws under which the municipal courts and the county courts of the state have been organized, their jurisdiction added to, limited, enlarged and changed from time to time by legislative act and a study of their various provisions prompts me to make the following suggestions:

1. Grant the county courts of those counties not now having a municipal or inferior court, exercising civil or criminal jurisdiction *at the county seat,* the same jurisdiction now provided for in the general municipal court act, now made elective for county boards, in Chapter 254, Wisconsin Statutes of 1923. This is jurisdiction to hear, try and determine all actions and special proceedings, (except the actions mentioned in subdivisions 1 and 2, of section 3573 of the statutes, and for divorce and bastardy), which may arise in said county, and be of any of the following classes: namely,

(1) Crimes and misdemeanors, excepting such as shall or may be punishable by commitment to the state prison.

(2) Civil actions and special proceedings in law and equity where the value of property in controversy or the amount of money claimed or sought to be recovered, after deducting all payments and set offs, shall not exceed five hundred dollars, and also of all actions for the foreclosure of mortgages and mechanics liens in which the amount claimed does not exceed the sum aforesaid, although the value of the property to be affected may exceed that sum.

(3) Offenses arising under the charter and ordinances of any incorporated city or village.

(4) Forfeitures and actions for the breach of any recognizance given in said court.

Judgment by confession is authorized to be entered before the judge of such court in any sum not exceeding one thousand dollars, without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by section 3657 of the statutes. The processes, proceedings and practice of the courts of justices of the peace to be adopted as far as practicable, and transcripts of judgments of such courts to

be filed and docketed with the clerk of the circuit court of the county where such court may be, with the same effect as transcripts from justice courts; trial by jury to be had in the same manner and upon the same processes as in courts of justices of the peace; sheriffs and constables of the county to have the same power to serve and execute processes as in justice courts, and receive the same fees and be subject to the same liabilities and penalties; the judge to keep a separate docket for criminal trials and civil actions and keep the entries therein as in justice court. A provision to be made for a stenographic reporter, with moderate compensation, and for an attorney's fee similar to that in justice court, the salary of the county judge to pay him for these services, and appeals to lie in the same manner as from the courts of justices of the peace.

2. Abolish all municipal courts which are located at the county seat and which have only a petty criminal jurisdiction and civil jurisdiction, not exceeding five hundred dollars, and merge them into the county court of the county which has been given the jurisdiction above specified.

3. Limit the jurisdiction of all municipal courts not located at the county seat, that is all municipal courts, to that named in the preceding paragraphs, thus bringing them under the provisions of the general act, authorizing the establishment of these municipal courts.

4. In Milwaukee County, the present municipal court should be abolished, and merged in the circuit court, to be known as the "Seventh," or "Criminal Branch," with an additional judge, all criminal business to be assigned to this branch and have precedence over civil business. In case affidavits of prejudice be made against said judge, or the criminal business to so great as to require assistance, he, or the chairman of the board of circuit judges, may send in any other circuit judge or judges to assist in dispatching the business.

There remains to consider the civil courts of Milwaukee County.

I approach this subject with considerable diffidence, and without the knowledge of experience which the Milwaukee lawyers have. There has been a decided difference of opinion among Milwaukee lawyers as to the jurisdiction of the civil courts of Milwaukee County, now fixed at $2,000. At a recent session of the legislature, a bill was introduced proposing to increase this jurisdiction from $2,000 to $5,000. This bill did not pass, but it brought out very sharp differences of opinion and ideas as to the functions of these civil courts. It was argued, in behalf of the enlargement of jurisdiction that the calendars were overcrowded, and that it would relieve the circuit courts to a large extent, which was greatly to be desired in view of the burden of work they were carrying. On the other hand, it was pointed out that these courts were originally designed to take the place of the numerous justice courts, and, when

originally passed, the law creating them had limited their jurisdiction to $1,000, and judges were chosen on the theory that the jurisdiction would be so limited. The cases to be tried in these courts were supposed to be those which were triable before justices of the peace, except that libel, slander and false imprisonment were added and the jurisdiction was increased to $1,000, instead of the $200 limitation applicable to the justice courts. They were made courts of early return in which pleadings could be quickly settled, and cases speedily brought on for trial, which should only be done where the issues are simple and the amounts involved are small. The right to trial by jury was made optional, and must be demanded if desired, and the party demanding the jury must pay for the attendance of a jury, either of six or twelve.

This idea of a court, qualified to quickly dispose of small litigation, is quite harmonious with the suggestion above made, of giving this same sort of jurisdiction to the county courts of the various counties outside of Milwaukee County, and would apply the same form of organization to that county as to the other counties, except that special judges would be provided to do the work instead of placing it upon the county judges who already are fully engaged. No new theories or rules of practice would be required in such court, and the practice would be kept, so far as possible, precisely that of the justice court, as modified by the suggestions heretofore made respecting the increased civil jurisdiction of the county courts. Lawyers would be familiar with this practice and would not be required to become familiar with a new practice for which they would not be able to charge their clients.

The increased jurisdiction afterwards granted to those civil courts really tended to complicate, rather than to simplify our judicial system. Their jurisdiction should rather have been diminished, than increased. The circuit court should be left as the sole court of general jurisdiction. Its practice is simple and uniform, and well known to the practicing lawyers.

The jurisdiction of the inferior trial courts, which, according to the recommendations here made, would be the county courts and the county municipal courts, should be so limited that it is certain the questions there presented will always be relatively simple, turning mainly on a question of fact, where the judges may readily and rapidly dispose of matters tried before them without great or extended study, and where the questions of law are comparatively simple. Appeals should lie from these courts readily to the circuit court, and they should be subject to the control and direction of the circuit court. They should operate under the uniform and well-established practice now applicable to justice courts, modified to the extent and in the same manner as the practice in the county courts and the county municipal courts heretofore referred to.

The difficulty and inconvenience resulting from having extended the jurisdiction of the civil courts of Milwaukee County to matters involving as much as $2,000, are rather well illustrated in the recent case of *Brust v. First National Bank of Stevens Point,* 198 N. W. 749, Advance Sheet June 13, 1924. Peter Brust and another sued the First National Bank of Stevens Point for services rendered by them as architects in and about a new bank building, to be built at Stevens Point. They brought their action in the civil court of Milwaukee County for $1,842. The bank applied to change the venue to Portage County, the county of its domicile. Its application was denied for the reason that no statutory provision authorizes a change of venue from the civil court of Milwaukee County. The defendant then defaulted, judgment was rendered in favor of the plaintiffs in the civil court; the defendant appealed to the circuit court of Milwaukee County, renewed its application, for change of place of trial, the application was granted and the case was transferred to the circuit court of Portage County, where there was a trial *de novo.* Our supreme court held that the practice was proper, and that the only way the First National Bank of Stevens Point could get a trial on the merits in its own county was to either litigate the case through in the civil court, or default in such court, then appeal to the circuit court of Milwaukee County, and apply for a change of venue, and try the case over again in Portage County.

A consideration of this case confirms the suggestion that the jurisdiction of the civil court of Milwaukee County, instead of being enlarged, might properly be reduced. It should be uniform with the municipal and county courts above recommended, limited to $500 and its practice should be modied so as to conform to the practice in those courts, thus making a completely harmonious system of inferior courts, all of which would be adequate in jurisdiction and practice, and, as thus organized, we would have a system comprised of,

First, the supreme court;

Second, the circuit courts, interchangeable, uniform and harmonious, with a criminal branch in Milwaukee, doing away with the present municipal court there;

Third. Probate and municipal courts having a uniform jurisdiction of $500, with the additions above set forth, uniform in practice with the justice courts;

Fourth. A six branch civil court in Milwaukee County, uniform in jurisdiction and practice with the probate and municipal courts in the other counties of the state;

Fifth. The present justice courts continued under the constitution,

serving such uses as attorneys might put them to in case of necessity in remote portions of the state.

If we reorganize our courts in the manner indicated, we will have the thing which all hold desirable—uniformity and certainty of jurisdiction and practice, simplicity of organization with adequate and appropriate machinery provided for the prompt and efficient dispatch of all business, large and small by competent and suitably organized judicial machinery

It should be remembered that these are only suggestions, which have occurred to the writer from an examination of the multitudinous acts of the legislature passed in an attempt to produce efficient administration, but which seem to have resulted in confusion and delay I wish to acknowledge my thanks and indebtedness to the legislative library of Wisconsin and to the report of a joint committee of the legislature for the session of 1915, for much of the detailed information which I have studied in preparing this paper.