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Repository Citation

Thomas H. Ryan, *Shall Municipal Courts Which Have Limited Concurrent Jurisdiction with the Circuit Courts Be Abolished?*, 9 Marq. L. Rev. 33 (1924).

Available at: <http://scholarship.law.marquette.edu/mulr/vol9/iss1/5>

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SHALL MUNICIPAL COURTS WHICH HAVE LIMITED CONCURRENT JURISDICTION WITH THE CIRCUIT COURTS BE ABOLISHED?

BY THOMAS H. RYAN

IN HIS address on the subject, "Simplifying Organization of the Courts of the State," given June 28, 1924, before the State Bar Association at Appleton, Wis., Hon. Roy P. Wilcox, of Eau Claire, Wis., among other things, advocated, in substance, the abolition of all municipal courts which are located at the county seat and the limitation of the jurisdiction of all municipal courts not located at the county seat to that now provided for in the General Municipal Court Act, and at the same time, giving to the county courts where municipal courts shall be abolished, the aforesaid general municipal court jurisdiction. In other words, he proposed to limit the trial jurisdiction of all municipal courts to practically that of the justice courts and to vest in the circuit court exclusive jurisdiction of all other actions and proceedings, except that now exercised by the county or probate courts.

While Mr. Wilcox freely admits that he is not one of those who believe that it is difficult or impossible to secure results under the present conditions, nor necessary that the present system of courts should be greatly changed, he believes, however, that there is opportunity to improve conditions as they are. In this we agree, but the improvement will not come by abolition of the municipal courts having large jurisdiction, but rather by establishing such a court in every county in the state not now having one.

Opposition to municipal courts which have broad jurisdiction, is not based on inefficiency of such courts, nor does it come from the people whom these courts serve, nor from the lawyers who practice in them, but solely from certain interested persons, who, because of the popularity and efficiency of the municipal courts, fear that eventually the circuit court will be abolished by the people.

While there is no disposition on the part of the people at the present time to do away with the circuit courts, the suggestion that our efficient municipal courts be abolished, for the sole reason of effecting simplicity of form and procedure in the organization of courts, will raise up thousands of municipal court protagonists who gladly will carry the fight into the opposition's camp and there demonstrate that this simplicity of form and procedure can be obtained better by the abolition of the circuit

court and the establishment of a county court. There is nothing sacred about the circuit court, unless it be its antiquity. The circuit court is the child of absolutism—a remnant of the Divine Right of Kings, retained by the people, after severing connections with the Mother Country, upon adopting the constitution; for the reason, perhaps, that the needs of the then sparsely settled country were adequately taken care of by an itinerant court. Under the Divine Right of King's theory of government, the King is actually the fountain and dispenser of justice. His court, for judicial purposes, at first was the King and his attendants; later, those who sojourned or traveled with him, to whom he delegated authority to determine controversies and dispense justice. Until Magna Charta directed the itinerant justices to make their circuit *four* times every year, they made them but once in seven years. (Many of our circuit courts to-day make their circuit *twice* a year.)

Following the principles set forth in the Declaration of Independence, the people repudiated the doctrine of Divine Right of Kings and instituted a government of the people and only those courts and that portion of the common law which was applicable to the then situation were retained. Service was the test then applied, not ancientry, uniformity, or simplicity. Under the new government, the people are sovereign and the court, aided by its officers and attorneys, is a mere agency established by the people to administer justice.

Courts, being the servants of sovereignty, in order to determine their adequacy and efficiency, must be judged by what they accomplish and not by their ancientness; by their work and not by their ancientry; by their fitness for the people whom they should serve, not by the inconvenience caused the judges and attorneys, sovereignty's servants.

In determining the comparative merits of two courts, the test to apply is, in which court can one better have right and justice, freely without sale, fully without denial, and speedily without delay?

This can be illustrated best by a specific example. The municipal court of Outagamie County was established in 1907. At that time there were eleven justices of the peace in Outagamie County who were paid each year by the county for their fees in criminal cases from two to four thousand dollars each. On top of this, thousands of dollars were paid the sheriff each year for the board of prisoners bound over for trial to the circuit court while awaiting trial. More than five times as much was thus paid by the county of Outagamie to justices of the peace in fees and to the sheriff for boarding prisoners awaiting trial, than is now paid in salaries to the judge and court reporter of the municipal court.

Again, the municipal court of Outagamie County has concurrent jurisdiction with the circuit court of all civil actions, both in law and

equity, where the value of the property in controversy does not exceed \$50,000 and has direct appeal to the supreme court. Because of the fact that within fifteen days after issue has been joined in an action, and before the witnesses have scattered, a jury trial may be had, and because of the further fact that the attorneys need be prepared to try only one case on the day fixed, seventy-five per cent of all civil actions in Outagamie County are tried in the municipal court. Better service to the parties to an action is given by the attorneys, because each action is tried while the facts and law in the case are fresh in their minds. Each action can be tried with less expense to the litigants, for the reason that the witnesses are subpoenaed for a day certain, and it is not necessary to pay for their attendance while awaiting the call of the case in which they are to testify. This is a great saving, especially when expert witnesses are subpoenaed.

In the circuit court an attorney is expected to be prepared for the trial of all his cases on the call of the calendar, even though such requirement may involve the presence of many witnesses in half a dozen or more actions, some of which may not be reached for days. It may be urged that this condition has been recently remedied by the circuit judges themselves. In justice to the circuit judges and to their credit, we must admit that they have made an effort to change the situation, but the fact remains that the circuit court can not be in two places at the same time, and where it is not in session the people of that county and the litigants therein are penalized by being compelled to await the opening of court, and it should be born in mind also that no reformation of the circuit courts on the part of the circuit judges was thought necessary until the competition and efficiency of the municipal courts suggested it.

It was stated by one of the speakers, President William A. Hayes, at the last annual bar meeting, that one of the reasons for the loss of public confidence in courts "is found in the multiplicity of our courts." The people are not concerned in the number or kind of courts, but rather in the kind of justice meted out by the courts and the cost thereof to them. Perhaps not five per cent of the people of this state, or of any other state, for that matter, are able to distinguish the circuit court from the municipal court, therefore, "the loss of confidence," if any, can not be attributed to such cause. What the people want, and what is needed to-day in each county, is a court which is always in session. Under the exclusive circuit court jurisdiction, long delays in the trial of cases are inevitable, and long delays are always costly and frequently result in the miscarriage of justice. Why should the accused be held in jail, at the expense of the taxpayers, until the circuit judge finishes his work in

another county? If he is innocent, the accused will want an immediate trial; either innocent or guilty, an immediate trial will save money to the taxpayers. Why should it be necessary to pay thirty-six jurors when twelve are all that are needed? Only the twelve jurors who sit in the action are under pay in the municipal court.

While this writer neither has had the time nor the opportunity to procure the data which is available, he is satisfied that if the facts were collected and disclosed, they would demonstrate that since the establishment of the municipal court in Outagamie County, the cost to the taxpayers of Outagamie County for the trial of court of record actions and proceedings, (though we now are maintaining both circuit and municipal courts,) is considerably less now than it was before the establishment of the municipal court. Due to the fact, that any action brought in the municipal court can be forced to trial by either party any time after issue has been joined by giving fifteen days notice of trial, few actions without merit are commenced and a large percentage of those which have been begun are settled before trial because of the imminency of trial, thus saving considerable to the taxpayers of the county in jury fees and fees of officers. On the other hand, if for any reason, such as illness of a material witness etc., a case can not be tried on the day set for trial, a short adjournment is taken; whereas, if the case were in any circuit court, before that court had "done so much to reform itself," the case would be continued to the next term. While it is true that the trial courts of this state are not now cluttered up with work, the fact remains that such has not always been the situation, and the advent and extension of the municipal courts have done more to effect the change than has any other cause. It is not many years ago that the circuit courts' calendars listed many actions in which issue had been joined years before. The party who has a weak case or a questionable defense therein is anxious for delay. It stands to reason that it is much easier to delay trial in an itinerant court than it is in one which is always in session. Justice often requires that a case be continued. If a continuance is necessary and requested in a court which is always in session, a week's or month's continuance may answer; if in an itinerant court which has only two jury terms a year, a six months' continuance may be unavoidable and necessary.

In substance, the reasons advanced by the president of the State Bar Association, by Mr. Wilcox, and by the other speakers who favored the aforesaid change, are (1) Unfamiliarity on the part of the lawyers as to the jurisdiction and procedure in municipal courts and (2) Transgression against simplicity of court organizations.

The inconvenience to attorneys is more imaginary than real. If an

attorney represents the plaintiff, he need not commence the action in the municipal court. If he wishes to bring the action in the municipal court, a letter of inquiry to the clerk of that court or to any local attorney will elicit the desired information. If he represents the defendant, his answer or demurrer is no different than if the action were pending in a circuit court and the procedure in the municipal court is the same as in the circuit court.

If simplicity of court organizations is the desideratum, which the writer doubts, any proposed change should be an improvement on our present system. An ideal system of courts would be a supreme court, such as we have now, and one county court in every county, located at the county seat, possessing the jurisdiction now exercised by the county or probate courts, as well as that now exercised by justice, police, municipal, and circuit courts. The work of this court should be divided into three branches or departments, viz: probate, criminal, and civil. At least two judges should be elected in each county to preside over the court and, in counties where litigation and work require it, additional judges should be elected by the people. The judges should apportion the work among themselves and should be prepared to take up the work in any department in case it should be necessary. This kind of a court would always be in session and would be able to meet all situations that might arise.

In this day of good roads, automobiles, and airplanes, there is no need for justice or police courts. The county seat is accessible to all, and the poorest litigant is entitled to as good a court as is the millionaire. Neither the amount involved nor the offense charged determines the intricacy or difficulty of a case, and should not determine the ability or training of the judge who is called upon to decide it. "Equal rights to all; special privilege to none," should be applied to all agencies of sovereignty. It is the transgression of this principle, not the multiplicity of courts, which is responsible for the loss of public confidence in our courts. Any proposal to the legislature to abolish municipal courts and to return to antiquated and inefficient courts should and will be met by a united protest from all citizens who have the welfare of our state at heart.