APPROVAL #. 112

CHAPTER 693

Print. 5218 Intro. 4924

IN ASSEMBLY

February 20, 1962

Introduced by Mr. BROOK—(on the recommendation of the Joint Legislative Committee on Court Reorganization)—read once and referred to the Committee on Rules

AN ACT

To establish a civil court for the city of New York to implement article six of the constitution of the state of New York, approved by the people on the seventh day of November, nineteen hundred sixty-one

Page 11 — line 5 — Word misspelled on bill Copy (attached — should be allowed

Compared by [illegible]

APPROVED

APR 24 1962

Approved

Date 6-13-77

No. of printed bills 1

No. of exposures exclusive of bills 74

I. L. C. on Court Reorganization

A - 4924

Memo Lieberth

S - 3493

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CITY COURT OF THE CITY OF NEW YORK
111 CENTRE STREET
NEW YORK 13, N. Y.

CHAMBERS OF
FRANCIS E. RIVERS
JUSTICE

3717

March 23, 1962

Acknowledged by WJR
3/28/62

Hon. Nelson A. Rockefeller
Executive Chamber
Albany, New York

In re: S. Int. 3717, Pr. 4067; A. Int. 4924, Pr. 5218
New York City Civil Court Act

Dear Governor Rockefeller:

I enclose a memorandum which analyzes the above measure and suggests what are deemed indispensable changes to be made by the Legislature to achieve a reasonably modern Practice Act for the Civil Court of the City of New York which will come into existence September 1, 1962.

The Special Committee of the Association of the Bar of the City of New York has reported as follows regarding this Civil Court Act:

> "This Committee points out that the new Civil Court will be, in the number of cases and its impact upon the general public, perhaps the most important of the civil courts of the state. We therefore particularly regret that the Albert Committee, undoubtedly due to the limited time allotted to it, did not draft a modern civil court act adapted to present-day conditions but rather relied primarily on repeating existing sections of the New York City Municipal Court Code and to some extent on the New York City Court Act and provisions governing practice in the County Courts outside the City of New York. The Committee questions whether a code originally adopted in 1915 for a court with a maximum monetary jurisdiction of $1,000 constitutes an appropriate model for a court with jurisdiction up to $10,000, established in 1962." (Underscoring supplied.)

The statistics of the Judicial Conference support the statement of the Bar Association committee that the new Civil Court in the number of its cases will be perhaps the most important of the civil courts of the State: it will commence on September 1 with more than 100,000 pending cases, which equals the combined total of pending civil cases in all the other courts of the State of

New York, excluding the courts for towns and villages. To this must be added the fact of a ninety-five judge bench and a scope of activities handling the bulk of money litigation for the entire Greater New York metropolitan area.

It would be generally agreed that in order for such an unprecedentedly large court to realize its potential of service to a vast population that it must function in accordance with the most modern practice techniques and not be radically limited by practice provisions adapted to conditions existing more than a half century ago. And further, how illusory is the benefit to the law profession, if simplification of court structure in New York means that the busy practitioner must be familiar with not only the United States and state Supreme Court practice but also with Civil Court practice?

Nothing could more violate the spirit of this particular time than to choose outdated practice provisions to regulate how a great court shall handle its litigation. For the present marks a time when the strivings of able minds during more than a decade have brought to fruition so many creative developments as to constitute a renaissance era in the judicature and judicial administration of the State of New York. Examples of this appear in the evolution of a new Judiciary Article, Civil Practice Act, Business Corporation Law, Uniform Commercial Code, and Family Court Act and the preparation now in process of a new Penal Law and Code of Criminal Procedure.

Because we think that the Civil Court of the City of New York should not be the one court barred from this progressive movement we have prepared this brief together with the proposed amendments and submitted it to members of the Legislature and other persons concerned with achieving the most modern Civil Court of limited jurisdiction.

Since a successful unified court system for New York State is not possible without the most efficient operation of the Civil Court of the City of New York, it is hoped that the law establishing the Civil Court can include these amendments. We believe there is still time for the Legislature to make the necessary changes so that the Civil Court can have the full benefit of the 1962 Civil Practice Act.

However, if the limited time remaining of this regular session does not permit incorporating these amendments we submit that the need for making these changes in the enabling act for the Civil

Court before it commences is so great as to justify a special session of the Legislature if the amendments are not achieved at this regular session.

Faithfully yours,

Legislative Committee of the
City Court of the City of New York

Francis E. Rivers

FRANCIS E. RIVERS, Chairman
HAROLD BAER, Vice-Chairman

CITY COURT OF THE CITY OF NEW YORK
111 CENTRE STREET
NEW YORK 13, N. Y.

CHAMBERS OF
FRANCIS E. RIVERS
JUSTICE

March 23, 1962

S 3717

Hon. Robert McCrate
Executive Chamber
Albany, New York

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Legislative Committee of the
City Court of the City of New York

Francis E Rivers

FRANCIS E. RIVERS, Chairman
HAROLD BAER, Vice-Chairman

Appraisal of Proposed :
New York Civil Court Act :
as Submitted in :
S. Int. 3717, Pr. 4067 :
in Support of Suggested Amendments:

MEMORANDUM

City Court of the City of New York
By: Legislative Committee

Lawrence J. Peltin, Chief Justice
Francis E. Rivers, Chairman
Harold Baer, Vice-Chairman

Dated: New York, New York
March 20, 1962

TABLE OF CONTENTS

Introduction 1

Perspectives 2

Procedural Problems Created by Combining the Two Courts . . . 4

1. Summons 6

2. Answer 6

3. Bill of Particulars 6

4. Trial 6

5. Judgments 7

Practice and Regulations for Courts Outside the City of New York 8

The Relation of the Procedural System to Maximum Functioning of a Court: Litigating Pursuant to Civil Practice Act and Pursuant to Civil Court Act (Formerly Municipal Court Code) Compared 10

A. Summons 11

B. Complaint 12

C. Bill of Particulars 22

D. Jurisdiction 22

E. Venue 29

Conclusion 30

Proposed Amendments to New York Civil Court Act

Proposed for Section 7. Money Actions and Actions Involving Chattels 34

Proposed for Section 20. Transitory Actions; Venue . . . 35

Proposed for Section 29. Requisites of Summons 36

Proposed Amendments to New York Civil Court Act (Cont.)

Proposed for Section 32. Personal Service without the State in lieu of Publication 37

Proposed for Section 33. Who May Serve Summons or Precept; Proof of Service 38

Proposed for Section 34. Substitutes for Personal Service of Summons and Complaint 37

Proposed for Section 35. Endorsement upon Summons in Action for Penalty 40

Proposed for Section 36. Endorsement upon Summons for Execution against the Person 40

Proposed for Section 39. Guardian ad Litem 41

Proposed for Article IX. Pleadings 42

Proposed for Section 83. How Cause Brought on for Trial; Notice of Trial 43

Proposed for Section 84. Adjournment of Trial 43

Proposed for Section 85. Jury Trial; How Obtained; Jury fee 43

Proposed for Section 86. Time for Rendering Judgment or Decision 45

Proposed for Article XII. Judgment 46

APPRAISAL OF PROPOSED NEW YORK CITY CIVIL COURT ACT AS SUBMITTED IN S. INT. 3717, PR. 4067, IN SUPPORT OF SUGGESTED AMENDMENTS

Introduction

This New York City Civil Court Act represents the adoption of the New York City Municipal Court Code, with slight modifications, to govern the practice and procedure of the Civil Court of the City of New York, which comes into being on September 1, 1962, by virtue of merging the personnel, jurisdiction and pending litigation of the City and Municipal Courts of the City of New York, which will cease to exist on that date.

The present City Court of the City of New York was created as of January 1, 1927, and, by virtue of section 15 of article VI which is presently operative, has original jurisdiction concurrent with the Supreme Court of law actions for a sum not exceeding $6,000 and has a practice and procedure which is governed in all important particulars by the Civil Practice Act.

The Municipal Court of the City of New York, created by act of the Legislature in 1902, has a jurisdiction of law actions for a sum not exceeding $3,000 and has its practice and procedure governed by the Municipal Court Code, which was adopted in 1915. The more important details of practice and procedure in this court are covered in this Code and it is only the omissions as to practice and procedure in the Municipal Court which are governed by

the Civil Practice Act.

The adoption of the new Judiciary Article of the Constitution resulted from at least ten years of intensive study and hearings by the Temporary Commission on the Courts (Tweed Commission) and other official bodies and was accompanied by the issuance of many publications in support of the constitutional changes proposed. The choice of the Municipal Court Code to govern the practice and procedure of the Civil Court of the City of New York was made by the Joint Legislative Committee on Court Reorganization some time in 1961 after its creation in May of that year and without the use of any public hearings or published reports in support of the decision.

This brief examines the relevant standards to determine whether the Civil Practice Act or the Municipal Court Code with proposed amendments is better adapted for the success of the Civil Court of the City of New York in handling efficiently its court business.

Perspectives

Putting the Civil Court of the City of New York in its proper perspective in the judicial system of the State of New York requires assigning it a place between the Supreme Court and that occupied by the County Courts outside of the City of New York. As stated in the plan of the Temporary Commission on the Courts (July 2, 1956, page 54), "the General Court is conceived of in the Commission's plan as a trial court for New York

City somewhat comparable to the County Court in counties outside the city." A comparison of the jurisdiction which the Legislature may give the Civil Court of the City of New York as provided by section 15(a) of article VI with the jurisdiction given by section 11(a) of article VI to the county courts shows substantial equality in jurisdiction; although the Civil Courts volume of litigation will be many times greater than that of all these County Courts combined.

The goal conceived by the court reorganizers as regards the function to be served by the Civil Court in handling the legal business of New York City has always been the following: to give New York City a great court of limited jurisdiction in which would be handled the bulk of the normal civil litigation arising day by day in the entire metropolitan area. Its jurisdiction would include the jurisdiction and business of the City Court of the City of New York, which has concerned itself in the main with commercial and tort litigation limited in amount and of similar nature to that handled by the Supreme Court; also the jurisdiction and business of the Municipal Court which, in addition to tort and commercial litigation involving sums less than $3,000, has also included litigation involving disputes over small claims, disputes between persons within a neighborhood, and the bulk of landlord and tenant proceedings. It is expected that the combining of these two courts into a single court, the jurisdiction of which would be enlarged to cover money disputes up to $10,000 and certain equitable powers, would so enlarge its judicial capacity as to cover a multitude of lawsuits extending from those involving

a few dollars to those involving disputes over large sums of money and valuable property rights.

As evidence of the tremendous volume of business to be handled by the Civil Court, the report of the Judicial Conference, volume 1,1962, shows 29,787 civil cases pending in the Supreme Court in New York City as opposed to 105,408 civil cases, exclusive of landlord and tenant and small claims, pending in the City and Municipal Courts of the City of New York.

Not the least important among the goals also fixed for the Civil Court of the City of New York is that of alleviating calendar congestion and trial delays, and at the same time improving the quality and timeliness of justice accorded litigants.

Procedural Problems Created by Combining the Two Courts

The Sixth Annual Report of the Judicial Conference (1961) shows (page 243) that during the year July 1,1959, through June 30, 1960, 182,398 summonses were filed in the Municipal Court of the City of New York where the sum sued for was less than $1,000 and that 76,171 summonses were filed there in cases where the amount sued for was between $1,000 and $3,000. During the same period the total number of cases added to the trial calendar of the City Court, most of the tort actions of which were for $6,000, amounted to 35,262, of which 1,869 consisted of cases transferred to the City Court from the Supreme Court.

It must be expected that the increase of the jurisdiction of the Civil Court to $10,000 and the addition of certain equity

powers and the possibility of the Legislature allowing jurisdiction to the Civil Court in any money sum as to cases transferred from the Supreme Court, will mean a great increase in the Civil Court litigation of the kind which presents problems equivalent to those occurring in the Supreme Court.

The statistics of the Municipal Court during the year July 1, 1959, to June 30,1960, show that 47,231 notices of trial were filed in actions and that 9,706 personal appearance actions were noticed for trial by the clerk and that of the actions noticed for trial 16,587 were for sums under $500 (page 242, Sixth Annual Report, supra). In the case of the City Court, on the other hand, so few of its cases are without attorney representation that no record is kept of it and most of its cases noticed for trial involve sums of many thousands of dollars.

It is fair to say that the practice provisions of the Municipal Court have been influenced in large measure by the needs to serve the substantial number of litigants appearing without attorney and the need to serve the convenience of neighbors in their disputes involving small money value. It is reasonable to infer that the origin of the following provisions which have been copied from the Municipal Court Code into the Civil Court Act resulted from the need to serve the conveniences of such litigants within a neighborhood and often without representation by attorney:

1. Summons: (a) requirement that the defendant appear before the clerk of the court and make his answer, (§ 55(f) Civil Court Act), rather than appear by serving a notice on the plaintiff's attorney as required by the Civil Practice Act; (b) that an endorsement on the summons made by the clerk of the court where the plaintiff is without attorney or by the plaintiff's attorney may serve as a complaint rather than a requirement for a formal complaint as called for by the Civil Practice Act; and (c) that the summons be filed in the office of the clerk of the court in the county where the action is pending within five days after service, (§ 33(c)), rather than requiring the filing of proof of service of the summons at the time of entering judgment, as required by the Civil Practice Act.

2. Answer: the provisions that a defendant without attorney may appear in court and have the clerk endorse his answer upon the summons or that the answer may be informal rather than a formal answer served upon the plaintiff's attorney, as required by the Civil Practice Act.

3. Bill of particulars: the requirement that the original bill of particulars be filed with the clerk of the court at the same time service of a copy is made on the adverse party or his attorney, (§ 57), rather than served only upon the attorney for the defendant, as required by the Civil Practice Act.

4. Trial: (a) a provision that where any party appears

in person the clerk shall fix a date for a trial not less than five nor more than fifteen days after joinder of issue and immediately notify all the parties by mail of such date, (§ 83), rather than having the case placed in its regular order on the trial calendar by filing a note of issue, as required by the Civil Practice Act; (b) provision for a jury of six persons; (§ 87(a)), rather than twelve persons, as required by the Civil Practice Act.

5. Judgments: all judgments shall be prepared by the clerk of the court under direction of the court except where the party in whose favor such judgment is rendered has appeared by an attorney, (§ 94), rather than omitting any power to the clerk to prepare judgments, as is done by the Civil Practice Act.

During the year above referred to the combined figures of the City Court and the Municipal Court show 9,706 personal appearance actions noticed for trial by the clerk as opposed to 69,078 notices of trial filed by attorneys in actions. The primary problem to be solved, therefore, in this consolidated court is whether the practice and procedure should be fashioned to serve the needs of 12-1/2% of the litigants or to serve the needs of 87-1/2% of the litigants.

In other words, should the Civil Practice Act govern the practice and procedure in all the cases in the Civil Court or should the Municipal Court procedure, as is the practical result of the Civil Court Act, govern the practice and procedure of all the cases

in the Civil Court or should the Civil Practice Act govern as to cases involving amounts above the present jurisdiction of the Municipal Court and the Municipal Court Code govern the practice and procedure of cases within the present jurisdiction of the Municipal Court?

Practice and Regulations for Courts Outside the City of New York

The County Courts outside the City of New York have the Civil Practice Act as their only Act to govern their practice and procedure. In fact, the jurisdiction of the County Court is set forth in section 67 of the Civil Practice Act. Reasoning by analogy, one would say that this is an argument to show that the practice and procedure in all the cases of the Civil Court of the City of New York should be governed solely by the Civil Practice Act.

It is true that in all the counties outside of New York City there are courts smaller than the County Court for the handling of smaller litigation, which means that the problems arising from combining in the same court small causes and large causes do not necessarily arise in the County Court as they will in the Civil Court of the City of New York. In the counties having large cities, courts analogous to the Municipal Court of the City of New York were continued by article VI of the Constitution, as shown in the case of the following City Courts: Albany, jurisdiction of $2,000; Buf-

falo, $1,000 jurisdiction; Mount Vernon, $6,000 jurisdiction; Rochester, $3,000 jurisdiction; Schenectady, $1,000 jurisdiction; Troy, $2,000 jurisdiction; Utica, $2,000 jurisdiction; Yonkers, $6,000 jurisdiction; Syracuse Municipal Court, $6,000 jurisdiction; and Nassau District Court, $6,000. It is obvious that if any of these City Courts were combined with the County Court in the county in which they are located any one of these consolidated courts would not have a wide spread of cases even nearly equal to the spread which will exist in the Civil Court of the City of New York.

Perhaps this means that best judicial administration would have been secured by providing a court of lesser jurisdiction than the Civil Court for the handling of these smaller causes. The fact, however, that this was not done should not constitute a reason for conforming the practice for all the cases to the needs of the 12-1/2% which represents the smaller causes.

The fact that the Yonkers City Court Act, adopted in 1939, and the Mount Vernon City Court Act, adopted in 1922, make the Civil Practice Act the sole regulator of the practice and procedure in these courts is certainly an argument for the Civil Practice Act governing all the procedure in the Civil Court of the City of New York, particularly when its jurisdiction is so much larger than that of either of these two City Courts. Further, these two courts, each with a $6,000 jurisdiction, are able to handle both large and small causes pursuant to the Civil Practice Act.

The Relation of the Procedural System to Maximum functioning of a Court: Litigating Pursuant to Civil Practice Act and Pursuant to Civil Court Act (Formerly Municipal Court Code) Compared

It is generally agreed that the Civil Court of the City of New York must be able to develop and expand so as to handle the bulk of litigation in New York City. It will be shown here that the restrictions upon litigation inherent in the Civil Court Act will constitute such a straitjacket for that court as to frustrate its capacity for production and to preclude its ever attaining its potential or realizing the stature intended for it.

In contrast to this, it will be shown how, if the Civil Court functions in accordance with the Civil Practice Act, it will be able to operate efficiently without artificial barriers or limitations and thereby realize and exercise its maximum powers and hence be able to fulfill its destiny as a great court in a great metropolis. An examination follows as to the results obtained in coping with calendar congestion delay, in improving the quality of justice rendered and the efficiency of judicial administration and in raising levels of professional competence when the conduct of the most important procedural operations is pursuant to the Civil Practice Act on the one hand and pursuant to the Civil Court Act on the other hand.

A. SUMMONS (Sections 28-36 CCA)

Section 29(a) of the Civil Court Act contains the requirement that the summons must summon the defendant to appear before the clerk of the court within ten days from the date of service and make answer to the complaint. The requirement to make answer by appearing before someone in the court (the clerk in this instance) was copied from section 19 of the Municipal Court Code, which in turn traces back to section 12 of chapter 344 of the Laws of 1857, at which time the defendant was required to appear before the justice in the courtroom and make answer to the complaint.

The first defect, and a most important one, in such a procedural requirement is found in a physical problem relating to existing courthouse structures, as follows: The Municipal Court has two separate district courthouses in the Bronx; six separate district courthouses in Queens; four separate district courthouses in Kings and two separate district courthouses in Richmond County. Furthermore, the City Court has a separate building in the Bronx, Queens and in Kings, where five of the ten justices are in the Municipal Building of Brooklyn. This means that it would be impossible for an attorney issuing a summons to state the address of the court in which the defendant is to appear and make his answer.

Such a problem did not arise under the Municipal Court Code since by section 17 of that Act it was required that an action be brought in a Municipal Court district within the borough in which either the plaintiff or the defendant resided or had a place for the regular transaction of business.

Such a problem would be obviated if Rule 45 of the Rules of Civil Practice governed here, providing as it does that appearance or answer is to be made by service of the same upon the plaintiff's attorney.

Section 33, subdivision 3 of the C.C.A. requires that proof of service of the summons be filed in the office of the clerk of the county where the action is pending within five days after service of the summons. Here again hopeless confusion is created by the words "clerk of the court in the county where the action is pending" for the same reasons stated above about the multiplicity of courthouses and the absence of one separate central courthouse in each county. It would seem that the only argument possible to justify such a requirement is the fact that by section 173, subdivision b, the clerk of the court is to receive a fee of $4 as the charge for filing a summons with proof of service. Under the Civil Practice Act, sections 486 and 494(a), filing of proof of service of the summons in the Supreme Court is required only where the defendant has defaulted and at the time of entering judgment. In the Municipal Court, in the year July 1, 1959, to June 30, 1960, 258,569 summonses were filed but only 56,937 cases were noticed for trial. From this it would appear that much unnecessary work is created both for attorneys and for court personnel by this requirement to file proof of service of the summons.

B. COMPLAINT

Section 55 of the Civil Court Act, subdivisions (a) and (e), permit an action to be commenced (except in the special cases

set forth in subdivision (b)), without the service of a formal complaint and with the cause of action being expressed by a statement of its nature and substance endorsed upon or annexed to the summons. In other words, the Civil Court Act has authorized what section 78 of the Municipal Court Code refers to as oral pleadings and what section 55(a) calls "short form or endorsement" pleadings.

This means that a lawsuit for $10,000, other than one relating to real property or one where the summons is served outside the City of New York or by publication, can be started and go to final judgment in the Civil Court without the preparation and service of a complaint. While the plaintiff may prepare and serve a complaint instead of relying upon the endorsed statement on the summons, it is probable that there will be few instances where this will occur, both because of the need of the attorney to save time, and also because of his belief that his tactical position is better if he is not committed to any single theory of action, but can choose the best of a number of theories of action contained in all the evidence presented at the trial.

Since under subdivision (g) of section 55 the defendant need not prepare and submit a formal answer if the plaintiff has not served a complaint, the defendant likewise will not commit himself in writing to a single theory of defense, but will wait until all the evidence is in before taking a position as to the law and facts constituting his defense.

Although subdivision (c) of section 55 enables the court on its own motion to direct the service and filing of a formal

pleading, such an opportunity will not be given to the judge until the case comes before him for trial, at which time his requirement of formal pleadings will result in adjournments and increase trial delays.

Under these circumstances, it is a reasonable conclusion that the negotiations for settlement and the trial of most of the cases in the Civil Court will take place without the existence of a formal complaint or a formal answer.

Such a situation makes for a deterioration rather than an improvement in the judicial administration of the Civil Court for these two reasons: (1) it will increase calendar congestion and delay and (2) it will result in less efficiency in the settlement and trial of cases because of its preventing the defining and framing of issues before cases are discussed or tried.

Many more suits will be started because the attorney who can commence an action by writing upon a summons a short statement of his cause of action will not have to first research the law, articulate a cause of action in writing and determine whether he has a worthwhile suit before starting an action. When it is considered, as stated above, that although 258,569 summonses were filed in one year in the Municipal Court only 56,937 of them were noticed for trial it is a fair inference that the oral summons permits many cases to be started which should never have been started. With the jurisdiction increased from $3,000 to $10,000 it can be expected that the number of unmeritorious claims sued upon will be greatly increased, thereby increasing greatly calendar congestion and trial delay.

When the Civil Court Act by the informal pleadings makes more easy the commencement of an action, it is acting in direct opposition to one of the main goals of court reform, namely, to reduce calendar congestion and delay.

In the second place, inefficiency in the disposition of cases either by settlement or trial results from the oral pleadings because, as stated, of the inability to frame issues so that what is relevant to discussion or trial can be determined promptly.

The following quotation from the opinion of Lord Parker in Banbury v. Bank of Montreal (1918 Appeal Cases, pp. 709-710), which is quoted with approval by former Chief Justice Arthur T. Vanderbilt of the Supreme Court of New Jersey in "The Challenge of Law Reform" at pages 60-62, contains a clear description of the evil done to the trial of a case where the pleadings and other pre-trial procedures have not clearly defined the issues:

> "The trial judge is said to have misdirected--I think in several respects he did misdirect--the jury, but I cannot think he received the assistance which might have been expected in so complicated a case . . . Nor do I blame counsel. The fault lies in the system which permits a plaintiff to set up at the trial without amending his pleadings a case other than that put forward in the statement of claim. When this is done the new case cannot possibly be formulated with the precision necessary to elucidate either the principles of law which may be applicable or the issues of fact which may be involved. Both the counsel and the Judge labour under great disadvantages and a miscarriage of justice is all too likely to occur.
>
> "The system of pleading introduced by the Judicature Acts was no doubt intended as a compromise between the rigid system which prevailed in the Common Law Courts and the loose prolixity of the Bill in Chancery. The Bill stated all the facts at great length and prayed such relief as the petitioner might be entitled to in the premises. The Chancellor or Vice-Chancellor had to find out

for himself what might be the equities between the parties. For this he could take what time he liked and often took a very long time. The present practice appears to me to have most of the vices of the old procedure in Chancery. There are pleadings it is true, but the pleadings are for all practical purposes disregarded. The plaintiff is allowed to prove what he likes and set up any case he can. The Judge has no longer to deal with the case formulated on the pleading, but to make up his mind whether on the facts proved there is any, and what, case at all.

"The disadvantage is accentuated when there is a jury; the Judge cannot take time to consider the matter and counsel have not considered it as they would have done had they been compelled to embody their case in a statement of claim. Under these circumstances there is little wonder that a Judge should misdirect a jury and that the real question of law or fact should, as in this case, emerge only after a long discussion on appeal.

"Had the plaintiff, after admitting that it was not within the scope of the Bank's business to advise on Canadian investments at large, been compelled to amend his statement of claim by stating the special circumstances, which, as he alleged, brought it within the scope of the Bank's business to advise the plaintiff on this particular investment, I doubt whether the action would have proceeded further, and I am clearly of the opinion that the question of authority would not have been left to the jury. The impossibility of the plaintiff's case would have been manifest on the record." (Underscoring supplied.)

Permitting the commencement of an action in the Federal court by an informal statement of the cause of action does not hamper achieving a clear definition of issues by the time of trial because of the various pre-trial procedures (not provided for in the Civil Court Act) which insure timely clarification of the issues in each action.

The inability of the informal pleadings to serve satisfactorily without the requirement of these pre-trial procedures is shown by this quotation from Conley v. Gibson, 355 U.S. 41, 47 and 48:

> "The respondents also argue that the complaint failed to set forth specific facts to support its general allegations of discrimination and that its dismissal is therefore proper.
>
> "The decisive answer to this is that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. The illustrative forms appended to the Rules plainly demonstrate this. Such simplified 'notice pleading' is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues.[9]"
>
> (Underscoring supplied)

"9. See, e.g., Rule 12(e) (motion for a more definite statement); Rule 12(f) (motion to strike portions of the pleading); Rule 12(c) (motion for judgment on the pleadings); Rule 16 (pre-trial procedure and formulation of issues); Rules 26-37 (depositions and discovery); Rule 56 (motion for summary judgment); Rule 15 (right to amend)."

The same idea is expressed in Barron and Holtzoff's "Federal Practice and Procedure," volume 1A, in section 471, as follows:

"The pretrial conference is an important adjunct of the other procedural devices provided by the Rules. The simplified pleading permitted by Rule 8 is possible because the issues can be defined at the pretrial conference. The unlimited joinder of Rules 13, 14 and 18 to 24 is made workable by the availability of a pretrial conference at which the court can decide on the formal order of trial.

"In every judicial district in which compulsory pretrial conferences have been used, judicial statistics have shown that the time spent at the pretrial conferences is saved many times over in shorter trials. And the pretrial conference also eliminates court congestion by stimulating settlements." (Underscoring supplied)

The Civil Court Act does not supplement its informal pleadings with any pre-trial procedures for framing issues. Perhaps such a procedure can work in a Federal court district where as in the Southern District, there were 12,427 civil cases pending on March 1, 1962, but would be impossible to work in the Civil Court of the City of New York which on September 1, 1962 will commence with more than 100,000 cases pending on the trial calendars.

Lacking the Federal devices for clarifying issues, it is submitted that the informal pleadings are seriously deficient for enabling efficient handling of litigation and that the regulations should require formal pleadings in order to insure the maximum preparation being done by attorneys to clarify issues before appearance in court for the actual trial.

Practice in the Supreme Court insures the presence of formal pleadings before the trial, by provisions of the Civil Practice Act, the Rules of Civil Practice, and also by the court calendar rules, which require the filing of a copy of the verified complaint, bill of particulars and other papers before the case can be advanced for actual trial.

Section 55(b) of the Civil Court Act recognizes the necessity of formal pleadings for clarifying issues in actions involving real property and requires preparation and service of complaint with the summons in such cases. It is submitted that many of the actions in the Civil Court relating to contracts, negotiable instruments, insurance policies, actions under various statutes, and various tort actions will present as great or greater difficulties and complexities in the preparation of, and greater need for, a formal complaint than will many of the actions involving real property. Since it would not be feasible to identify by description all such actions, as can be done in the case of actions involving real property, the problem can be handled successfully only by requiring formal complaints to be served in all actions.

An important fact is lost sight of by many persons which concerns an effective power for coping with calendar congestion which was possessed by the City Court but will not be possessed

by the Civil Court, namely: the power to transfer cases to a court with less jurisdiction where the damages involved cannot be more than the jurisdictional limit of the court to which the case has been transferred; in other words, the ability of the City Court to transfer such cases to the Municipal Court. The settlement of thousands of cases in the Supreme Court and in the City Court has been possible only because of the ever-present possibility of the case at issue being transferred out of the particular court and into another court with lower jurisdiction. The adoption of calendar rules which confine a case indefinitely to a reserve calendar because of being brought in the wrong court is possible only because the plaintiff's attorney has the alternative of having the case tried in another court which will have less jurisdiction.

When cases come to the Civil Court from the Supreme Court or when cases are started in the Civil Court, there is no transferring of the case possible: it must be disposed of in the Civil Court. Hence, the Civil Court will not have the advantage of one of the most valuable devices for coping with calendar congestion in that it cannot transfer cases out of its court and it cannot have the use of transfer powers as an aid to the settlement of cases.

Under these circumstances, with informal pleadings the Civil Court will have no defense against an appalling proliferation of lawsuits, many of which will be spurious or of doubtful validity.

The Civil Practice Act presently operative, together with

the Rules of Civil Practice and the Rules of the Court, make certain that a verified complaint is ready and submitted before the case is called for trial.

The proposed new Civil Practice Act contained in Senate Int. 26, Pr. 26, is a product of thorough research by able lawyers during many years.

Section 3013 of this proposed Civil Practice Act expresses the requirement of particularity of statement generally in pleadings and then Rule 3014 supplements the requirement as follows:

> "Statements. Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs. Each paragraph shall contain, as far as practicable, a single allegation. Reference to and incorporation of allegations may subsequently be by number. Prior statements in a pleading shall be deemed repeated or adopted subsequently in the same pleading whenever express repetition or adoption is unnecessary for a clear presentation of the subsequent matters."

The proposed Civil Practice Act goes even farther to require in sections 3015 and 3016 particularity of statements as to specific matters and in specific actions.

C. BILL OF PARTICULARS

Section 57 of the Civil Court Act adopts the procedure of the Supreme Court for procuring a copy of a bill of particulars, but requires that the original of the bill of particulars be filed with the clerk of the court within the same time that service of a copy thereof must be made on the adverse party or his attorney. It is submitted that this filing requirement be deleted for the same reasons as have been stated respecting the requirement that proof of service of the summons must be filed in court.

It is suggested by some persons that the presence of a bill of particulars in the action dispenses with the need for a formal complaint. It is submitted that while the bill of particulars may apprise the defendant of certain evidence as to liability and damages which the plaintiff proposes offering at the trial, the bill of particulars fails to help define and clarify the issues in that: It does not set forth the legal theory of the plaintiff's cause of action; or the legal theory of the defendant's counterclaim and his affirmative defenses; nor does it result in provoking opposing statements and denials as a result of which the issues are joined and developed.

D. JURISDICTION

Section 7 of the Civil Court Act after vesting the court with jurisdiction of actions and proceedings for the recovery of

money or chattels where the amount sought to be recovered or the value of the property does not exceed $10,000, proceeds to limit that jurisdiction by providing that either of the following conditions must also obtain to give the court jurisdiction:

"(a) that defendant resides within the city of New York, or

"(b) that the cause of action arose within the city of New York and the defendant either resides or has regular employment or a place for the regular transaction of business within the city of New York or the counties of Westchester or Nassau, or

"(c) that the action is brought to recover damages for a personal injury or an injury to property and the cause of action arose within the city of New York."

The jurisdiction of the City Court contains none of these limitations nor does the Civil Practice Act place such territorial limitations on the jurisdiction of the Supreme Court.

In the Supreme Court or in the City Court if a plaintiff has a business transaction with a defendant in any place without New York City or State, and whether either, both or neither is a resident of New York City, the plaintiff can sue the defendant in either of these courts if he can serve him with a summons in New York City, and in the case of the City Court if the claim is for less than $6,000.

This means that if A, a non-resident of New York City, has a cause of action against B, a non-resident, which arose outside of New York City, A can sue B in the Supreme Court or in the City Court, (if for less than $6,000), if A can serve the summons

on B in New York City.

Under the Civil Court Act this non-resident A could not sue B in contract in the Civil Court of New York even though he could serve the summons on non-resident B within New York City because: (a) B does not reside in New York City nor (b) the cause of action arose outside New York City and B does not have regular employment or a place for the regular transaction of business in New York City.

Even a resident of the City of New York who has a business transaction with a man whose business office and residence are in Albany, Newark, Bridgeport or in any other place without New York City and the counties of Nassau and Westchester, cannot sue this non-resident in the Civil Court of New York for a legal wrong committed in the transaction even though the cause of action arose within the City of New York.

Hence the curbs of (a) and (b) in section 7 which concern mainly commercial or contract causes should be eliminated and stricken out because they deny to the Civil Court the ability to serve as a forum for the adjustment of all commercial disputes over money claims up to $10,000 arising among persons doing any business in the City of New York, and where the defendant can be served in New York City. The lawsuits which (a) and (b) exclude from the Civil Court are so many and important as to emasculate the court for serving as a tribunal of the large size which is commensurate with

the unlimited variety and scope of legal problems spewned by the innumerable business transactions of a great metropolis and where the amount involved is under the money limit of jurisdiction of the Civil Court.

The City Court has now and has had this unlimited territorial jurisdiction, so that for at least a half-century it has been able to serve as a forum to resolve any legal dispute involving sums of limited amount where the defendant can be served with summons within New York City. If the Civil Court is to absorb and expand the capacity of the City Court, then surely it should not be limited to lesser jurisdiction than that possessed by the City Court.

Similarly subdivision (c) of section 7 should be stricken and eliminated. This condition would make it so that a resident of New York City, who was injured on the Pennsylvania Railroad in the State of Ohio, could not sue in the Civil Court of New York City--nor could he sue the New York Central Railroad if he was injured in Buffalo--because the cause of action did not arise within the City of New York. Here again the court's capacity to receive and adjudicate lawsuits fails to be co-extensive with the needs of the residents of New York City.

Similarly, the definition of residence of a corporation and joint-stock or other unincorporated association under this section 7 is improperly limiting because it precludes application of settled law holding that the corporation is within the jurisdiction

for purposes of suit if it has substantial contacts with New York City. (See McGee v. International Life Ins. Co., 355 U. S. 220; and Zacharakis v. Bunker Hill Mut., 281 A. D. 487.)

Hence, this last paragraph of section 7 should be stricken out as well as paragraphs (a), (b) and (c) of section 7. There is no reason for this manifestation of greater concern for the rights of defendants than for the rights of plaintiffs, particularly when residents of New York City, in fixing the limits of jurisdiction of the Civil Court of the City of New York. The Civil Practice Act does not manifest such unequal protection of the law for the rights of defendants, nor does the New York City Court Act or the Municipal Court Code. Surely nothing new has occurred to justify such a break with precedent by the Civil Court Act.

The guiding principle for creating the jurisdiction of the Civil Court of the City of New York as well as for prescribing practice and procedure of the new court is one and the same: what arrangements will contribute to the most efficient and just handling by the Civil Court of its tremendous and ever-expanding case-loads? The answer to this will not be found by equating "the jurisdiction of the inferior Civil Court in the City of New York [with its pending case-load of over 100,000 cases] with that of the County Court in counties outside the City of New York,"* [all of such counties

* See page 2 at § 7, New York Civil Court Act, Joint Legislative Committee on Court Reorganization, Vol. IV.

together having a total pending case-load of approximately 5,000 cases (Judicial Conference, Sixth Annual Report, p. 226)7.

The Civil Court Act shows clearly that its framers copied from the jurisdiction and practice governing the County Court its restrictive attributes of territorially limited jurisdiction and rejected its unlimited attributes, viz: the Civil Practice Act; and at the same time they copied from the Municipal Court of New York City its most restrictive attributes, viz: the Municipal Court practice, but rejected its unlimited attributes, viz: unrestricted territorial jurisdiction.

To make the Civil Court of the City of New York the largest court in New York State and then to adopt the most effective means to restrict its activities and powers seems the surest road to inefficient judicial administration and the aggravation of court congestion and delays.

The Introductory Note to Vol. IV, page 2, section 7 (supra) justifies inclusion of these territorial limitations on the jurisdiction of the Civil Court upon the ground that the state-wide efficacy of the process of the new court pursuant to section 31 makes this necessary.

If this is true then it would be vastly better to limit the efficacy of the process of the Civil Court to New York City (as in the case of the City Court Act and the Municipal Court Code) to

New York City, Westchester and Nassau counties, since the increased number of actions made possible in Civil Court by the state-wide efficacy of its process would be much less than the number of cases denied use of the Civil Court because of these territorial limitations on jurisdiction. Furthermore, why should residents of New York City be denied in many instances the right to sue non-residents or even residents in the Civil Court just in order that a comparatively few persons can sue a resident of the Third or Fourth Department in the Civil Court rather than in the Supreme Court?

It is submitted, however, that the state-wide efficacy of Civil Court process is no more a reason for limiting territorially the jurisdiction of the Civil Court than state-wide process is for limiting the jurisdiction of the Supreme Court.

The conclusion therefore is that all conditions should be stricken from the grant of jurisdiction to the Civil Court so that the Civil Practice Act provisions governing the Supreme Court rather than those applying to the County Court can free from territorial limitations the jurisdiction of the Civil Court of the City of New York.

Hence section 7 of the Civil Court Act should be amended to put a period (.) after "ten thousand dollars" and to strike out the remainder of the section.

E. VENUE

Section 20, "Transitory Actions: Venue", should be stricken out and rewritten to read: "An action, other than a real property action or an action specified in §§ 82-a, 182-b, 183, 184 and 184-a of the Civil Practice Act, must be tried in the county in which one of the parties resided at the commencement thereof. If neither of the parties then resided in the state it may be tried in any county within the City of New York which the plaintiff designates for that purpose in the summons or complaint."

Such an amendment of section 20 of the Civil Court Act would mean that the Civil Practice Act provisions respecting venue, except for a slight modification relating to suits between non-residents, have been made to apply to venue in the Civil Court.

Conforming venue prescriptions to the Civil Practice Act would mean that a non-resident could sue and have tried in the Civil Court a cause of action against a non-resident even though the non-resident defendant has no regular employment or place for the regular transaction of business within New York State, and even though the cause of action arose without New York City or New York State.

Conclusion

To fill the need of the entire metropolitan area for a tremendous new civil court, which can dispose of the bulk of New York City's litigation over money claims for limited amounts -- to achieve such efficiency and dispatch in the handling of these cases so as to eliminate calendar congestion and trial delays and achieve greater economies -- and to improve the quality and consistency of justice administered; all these are the goals fixed for the Civil Court of the City of New York.

It is submitted that the above shows that these goals can be achieved only by having the Civil Practice Act provisions govern as to the main practice provisions and routines relevant to achieving these goals, viz: jurisdiction, venue, summons, pleadings, trial and judgment. It has also been shown that having a practice act (Civil Court Act) which re-enacts the Municipal Court Code for the Civil Court of the City of New York seriously lessens the conveniences and efficiency of the court as a whole as well as that of the judges, lawyers, parties and non-judicial personnel.

Modernization of practice can be achieved only by adoption of the Civil Practice Act to cover these matters since the C.P.A. has been amended almost eleven hundred times since its adoption in 1920, as compared to the only 179 amendments made to the Municipal Court Code during the same period.

And now an entirely new Civil Practice Act has been prepared and will probably be adopted either in 1962 or 1963. Surely the great new court will need to be governed by the Civil Practice

Act if it is to enjoy the benefit of the most modern procedure which has been evolved to date.

Further, the lawyers will benefit by adoption of the Civil Practice Act, with which all lawyers are familiar, whereas lawyers who have practiced only in the Supreme and City Courts would have to learn what will be for them in many important respects an unfamiliar and new practice: the Municipal Court Code.

Finally, the experience tables of a truly efficient court can afford relevant evidence as to the value of the Civil Practice Act to achievement of maximum efficiency in judicial administration. No court, it is believed, has excelled the New York County Supreme Court in recent years as to the dedicated and unstinted work of its judicial and non-judicial personnel and of the lawyers practicing there; as to its use of all the techniques provided by the Civil Practice Act, as to its continued amendment of its court rules to achieve greater flexibility and efficiency, and as to its extensive use of procedures for the settlement of cases and of remand of cases to lower courts. It is a conspicuous example of the Civil Practice Act in action and proves its unique value and indispensability.

However, even with procedure pursuant to the Civil Practice Act, and this unprecedented attack on case-loads by all the judges and the use of all available techniques for speeding the disposition of cases, the Supreme Court of New York County has been able only to reduce trial delay by four months, i. e. from 25 to 21 months during the year period from January 31, 1961 to January 31, 1962. (Judicial Conference Statistical Report No. 2 - 1962). Consider how impossible a calendar congestion would have occurred had

practice in the Supreme Court New York County during this period been conducted in conformity to the Municipal Court Code.

The following statement from the Report on Proposal of the Joint Legislative Committee on Court Reorganization Relating to the City-Wide Civil Courts adopted on March 1, 1962 by a Special Committee of the Association of the Bar of New York City expresses strong disapproval of using the Municipal Court Code for the new Civil Court.

"This Committee points out that the new Civil Court will be, in the number of cases and its impact upon the general public, perhaps the most important of the civil courts of the state. We therefore particularly regret that the Albert Committee, undoubtedly due to the limited time allotted to it, did not draft a modern civil court act adapted to present-day conditions but rather relied primarily on repeating existing sections of the New York City Municipal Court Code and to some extent on the New York City Court Act and provisions governing practice in the County Courts outside the City of New York. The Committee questions whether a code originally adopted in 1915 for a court with a maximum monetary jurisdiction of $1,000 constitutes an appropriate model for a court with jurisdiction up to $10,000, established in 1962."

Section 182 of the Civil Court Act titled "Conformity to Supreme Court Practice" reads as follows: "Except as otherwise provided in this act or in the rules, the practice, pleadings, forms and procedure in this court shall conform, as nearly as may be, to the practice, pleadings, forms and procedure existing at the time in like causes in the supreme court."

It has been shown above that the Civil Court Act excepts from the area of conformity to Supreme Court practice the most important sections of the Civil Practice Act which are needed for assuring the Civil Court the most modern system of practice and procedure.

There has been annexed to this brief the text of amendments which if adopted will enable such conformity of the practice of the Civil Court of the City of New York to that of the Supreme Court as to insure the Civil Court having equal opportunity with the Supreme Court for efficiency in all phases of its judicial administration.

IT IS THEREFORE RESPECTFULLY SUBMITTED THAT THE BILL TO ESTABLISH A CIVIL COURT FOR THE CITY OF NEW YORK (SENATE INT. 3717, PR. 4067) SHOULD BE AMENDED TO REQUIRE SPECIFICALLY CONFORMITY OF ITS PRACTICE AND PROCEDURE TO THE SUPREME COURT AS TO THE MATTERS SET FORTH HEREIN.

Respectfully submitted,

Legislative Committee of the
City Court of the City of New York

Lawrence J. Peltin, Chief Justice
Francis E. Rivers, Chairman
Harold Baer, Vice-Chairman

Dated: New York, N. Y.
March 20, 1962.

Proposed Amendments to

New York Civil Court Act.

Proposed for Section 7. Money Actions and Actions Involving Chattels.

Strike out comma (,) after "Dollars" in line 9, page 4, and insert in its place a period (.) Then delete "provided" in line 9, page 4, and also the remainder of the section from line 10 through line 22 of page 4.

Proposed Amendments to

New York Civil Court Act.

Proposed for Section 20. Transitory Actions; Venue.

Strike out "An action" in line 9, page 8, and delete the remainder of the section through line 17, i.e. through "arose".

Insert in place thereof the following:

> "An action, other than a real property action or an action specified in §§ 82-a, 182-b, 183, 184 and 184-a of the Civil Practice Act, must be tried in the county in which one of the parties resided at the commencement thereof. If neither of the parties then resided in the state it may be tried in any county within the City of New York which the plaintiff designates for that purpose in the summons or complaint."

Proposed for Section 24. Assignees; Corporations and Assocations.

Strike out line 1 through line 4 on page 10 commencing with "A" and ending with "law".

Proposed Amendments to

New York Civil Court Act.

Proposed for Section 29. Requisites of Summons.

Strike out all of § 29 from line 14 commencing with "(a)" through line 27 on page 11 and from line 1 through line 4 on page 12 and insert in place thereof the following:

"The summons shall conform to the requirements prescribed in, and shall be substantially in the form provided by, the rules of civil practice, except that the time to appear or answer shall be ten days. In addition, it shall state the county in which the action is brought, and unless the action is thereafter removed to another county as herein provided, all subsequent proceedings in the action shall be in the division of the court situated in the county designated in the summons. All subsequent papers in the action shall designate the county in which the action is pending."

PROPOSED AMENDMENTS TO

NEW YORK CIVIL COURT ACT

Proposed for Section 32. Personal service without the state in lieu of publication.

Proposed for Section 34. Substitutes for personal service of summons and complaint.

Strike out the titles and the entire text of sections 32 and 34 and insert in place thereof the following:

" § 32. Service of summons without the state, or by publication, or by substituted service. The provisions of law relating to the service of a summons on the defendant within or without the state, or by substituted service, or by publication in an action brought in the supreme court shall apply to such service in actions in this court. Where an order, directing service of the summons without the state or by publication is granted, the summons shall state that the time within which the defendant shall serve a copy of his answer is fifteen days after service thereof, exclusive of the day of service."

Note: This proposed amendment is § 51 with "within" added and subdivision 2 of § 49 of the New York City Court Act.

PROPOSED AMENDMENTS TO

NEW YORK CIVIL COURT ACT

Proposed for Section 33. Who may serve summons or precept; proof of service.

Subdivision (a): Strike out "summons or service" so that the first line thereof shall read "Personal service of a precept", etc.

Subdivision (b): In line 12 on page 13, strike out the words "summons or".

Subdivision (c): Strike out "Within five days after service, excluding the day of service, the summons, or the summons and complaint if a formal complaint was served with the summons, must be filed with proof of service in the office of the clerk of the court in the county where the action is pending." (Subdivision (c) will then relate only to proof of service of a precept.)

Subdivision (d): At page 13, from lines 23 and 24 strike out "the summons has not been filed within five days after the service of the summons or summons and complaint or"; in line 25 strike out the word "where"; in line 26 strike out the words "plaintiff or"; and in line 27 strike out the words "summons or". The first sentence of subdivision (d) will then read: "Where in a summary proceeding the original precept has not been filed within three days, as provided herein, landlord may obtain an order providing for the

filing of the original precept nunc pro tunc."

(These amendments will make section 33 apply only to the service of the precept and the filing of proof of service of the precept.)

PROPOSED AMENDMENTS TO

NEW YORK CIVIL COURT ACT

Proposed for: Section 35. Endorsement upon summons in action for penalty.

Section 36. Endorsement upon summons for execution against the person.

Strike out each of these sections in their entirety and substitute no text in place thereof. These matters are covered in the Civil Practice Act, which has been made to apply to all details relating to the summons as regards form and service and proof of service.

PROPOSED AMENDMENTS TO

NEW YORK CIVIL COURT ACT

Proposed for Section 39. Guardian ad litem.

Strike out subdivision (b) and insert in place thereof the following:

"(b) Except as otherwise expressly provided in this act all questions as to the service of summons and commencement of an action against an infant defendant shall be determined by the provisions of law applicable to like cases in the supreme court."

PROPOSED AMENDMENTS TO

NEW YORK CIVIL COURT ACT

Proposed for ARTICLE IX Pleadings

Strike out all of Article IX except sections 72 and 73 and insert in place thereof the following:

" § 55. Pleadings, in general. (a) Except as otherwise expressly provided in this act all questions as to pleadings shall be determined by the provisions of law applicable to like cases in the Supreme Court.

" (b) Where a plaintiff appears without attorney, he may describe his cause of action to the clerk, and the clerk shall endorse the same upon the summons. Where a defendant appears without attorney, he may describe his answer to the clerk, and the clerk shall endorse the nature and substance of the answer upon, or annex it to, the summons; the address of the defendant, and his attorney if he shall appear by attorney, shall be endorsed upon the answer."

PROPOSED AMENDMENTS TO

NEW YORK CIVIL COURT ACT

Proposed for: Section 83. How cause brought on for trial; notice of trial.

Section 84. Adjournment of trial.

Section 85. Jury trial; how obtained; jury fee.

Strike out each of these sections in their entirety and in place thereof insert the following:

" § 83. How cause brought on for trial; adjournment of trial; jury trial. (a) Except as otherwise expressly provided in this act all questions as to bringing on actions for trial, adjournment of trial and trial by jury shall be determined by the provisions of law applicable to like cases in the supreme court.

" (b) Where any party appears in person, the fixing of a date for trial and the proceedings thereupon shall be as provided by the rules of court.

" (c) In a summary proceeding the demand for a jury trial may be made in open court on the return of the precept, except that if such proceeding is brought for non-payment of rent, the demand shall be made in the manner provided in subdivision (b) of section forty-four. The party demanding a trial by jury shall at the time of making said demand pay to the clerk the sum of six dollars for a jury of six and the sum of twelve dollars for a jury of twelve.

" (d) Unless a demand is made in a summary proceeding and the jury fee paid as above provided, a jury trial is waived and the court must hear the evidence and decide all questions of fact and law; provided, however, that the court may in its discretion, at any time before or during the trial, direct that a trial be had by jury, and thereupon a trial by jury shall be had in the same manner as if either party had demanded it, and the jury fee shall be paid by the landlord."

PROPOSED AMENDMENTS TO

NEW YORK CIVIL COURT ACT

Proposed for Section 86. Time for rendering judgment or decision.

Strike out the text of section 86 and insert in place thereof the following:

"Except as otherwise expressly provided in this act all questions as to the time for rendering judgment or decision shall be determined by the provisions of law applicable to like cases in the supreme court."

PROPOSED AMENDMENTS TO

NEW YORK CIVIL COURT ACT

Proposed for ARTICLE XII Judgment

Strike out all of Article XII and insert in place thereof the following:

" § 94. Judgments, in general. (a) Except as otherwise expressly provided in this act all questions as to the entry or rendering or vacating or amendment of judgments and orders or opening defaults and granting new trials shall be determined by the provisions of law applicable to like cases in the supreme court.

" (b) Where plaintiff appears without attorney or if the defendant appears without attorney and judgment has been rendered in his favor the judgment shall be prepared by the clerk of the court under the direction of the court.

MUNICIPAL COURT OF THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT JUSTICE
111 CENTRE STREET
NEW YORK 13, N. Y.

HAROLD J. McLAUGHLIN
PRESIDENT JUSTICE

83717

March 23, 1962

Acknowledged by WJR 3/28/62

Hon. Nelson A. Rockefeller
Governor, State of New York
The Capitol
Albany 1, N. Y.

Honorable Sir.

This communication is sent to you because of an alarming report in this morning's New York Times which says that the bill creating the New York City Civil Court is being amended to abolish the City Marshal system. I am authorized by all 55 Justices of this Court to represent them in petitioning you in the public interest to use every effort at your command to prevent this inadvisable action on the part of the Legislature.

The bill establishing the Civil Court for the City of New York, introduced in the Senate by Senator Albert as Print No. 4067, was promulgated after exhaustive study, investigation and consideration by highly competent legal minds who after adequate public hearings submitted it to the Legislature for enactment.

There are some differences of opinion concerning minor elements in the bill which when enacted can at a later time be adjusted and corrected. However, the matter of inclusion of the use of City Marshals in enforcing the mandates of the Court was thoroughly discussed both in private conferences and public hearings and it was apparently the unanimous opinion of those persons having actual contact and practice in the Court that the retention of the use of City Marshals to enforce the mandates of the Court is an absolute necessity.

You will upon inquiry find that those persons who would eliminate the use of City Marshals to the exclusive use of the City Sheriffs are either persons who have no familiarity with the operation of this Civil Court or, in the few instances where they are lawyers, are persons who have no contact or practice of any nature in this Court. In all instances they are theorists who deal in general "do-gooding" without regard for the practical aspects of the results of their recommendations.

The Albert Committee and its staff had very thoroughly investigated the relative merits of the use of Sheriffs and Marshals and sensibly came to the conclusion that they both will serve a useful and necessary purpose in the administration of justice. They therefore made provision for them in the recommended legislation.

The litigation in the City Court will be added to the litigation of the Municipal Court. Past experience has indicated that in the City Court where litigants have the option of either the use of a Marshal or a Sheriff the service of the Marshal has been preferable. In the Municipal Court the exclusion of Marshals to the use of the Sheriff would cause an impossible as well as impractical situation; for instance, during the year 1961 there were 10,253 writs of replevin issued by the Municipal Court. Of these only 289 were for property values of over $10.00 and 9,994 were writs where the property value was listed as $10.00, or less.

Most of these $10.00 writs were issued to local public utility companies for the recovery of their chattels from premises where service was discontinued for non-payment or other reasons. It would be highly impractical for them to use the Sheriff's office to recover these chattels. They do, however, find it convenient to use the service of a City Marshal mainly for the purpose of preventing disorders and maintaining the peace upon removal of such chattels. Under the Public Service Law they have the right to make entry upon private premises for the recovery of their own chattels and their attorneys inform me that if the services of Marshals were discontinued it would be necessary for them to demand police protection at public expense instead of their own as in the case of the use of Marshals. This burden alone, to detail 10,000 policemen in the course of a year, for such protection to their employees and the public is not only undesirable but unnecessary.

In addition I must point out to you that the Sheriff's Office operates at a great loss to the City Treasury. During 1957 its operating loss was over $600,000. In 1958, the Sheriff's Budget was approximately $775,000 and his income was $212,000, showing a loss of $563.000. In 1959 the Sheriff's increased income was $19,080, making a total income for that year of $231,080. The increased income of $19,080 necessitated a budget request for 1960 of $841,009, an increase of $67,707, making an additional loss to the City of $48,627. On the basis of these figures the operating loss in the Sheriff's office indicates that for each $1.00 of revenue the cost to the City Treasury is $3.75.

It must be further pointed out to you that in 1961 there was $57,770,356.85 in judgments docketed in the Municipal Court of which $753,711.92 was in Small Claims of under $100.00 in each instance. Such of these judgments as require execution are handled by Marshals. A deplorable picture would be presented in the administration of justice if these Marshals were to be eliminated. Not only would the financial burden upon the City Treasury be unbearable (approximating a $15,000,000 annual loss) but the Legislature might just as well tell the 41,384 litigants who used the Small Claims Court last year that the means of enforcing their judgments will be eliminated. They presently have difficulty enough encouraging Marshals to execute on such small sums. Their burden in having the Sheriff's office make collections would be insurmountable.

The experience in the use of Marshals in enforcing the mandates of this Court for upwards of 50 years is such that every lawyer practicing in this Court will testify as to their efficiency and absolute necessity. Those persons who for theoretical reasons

would dispense with their existence are unfamiliar with the operation of the Courts and their theories should be appraised accordingly. With the exception of the Municipal Court Committee of the Association of the Bar of the City of New York no Bar Association would support the elimination of Marshals and even in the case of that Committee they are in opposition to the Committee on the Courts in their own Bar Association.

I therefore cannot too strongly urge you to prevent the emasculation of Senator Albert's Court Reform Bill by the elimination of the provision in it for the continuance of the use of City Marshals. The success of this last-minute movement on the part of theorists would place upon the people of the City of New York an unconscionable financial burden as well as an impediment in the administration of justice.

Respectfully yours,

Harold J. McLaughlin
President Justice

MUNICIPAL COURT OF THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT JUSTICE
111 CENTRE STREET
NEW YORK 13, N. Y.

A4924

HAROLD J. McLAUGHLIN
PRESIDENT JUSTICE

April 6, 1962

Hon. Robert MacCrate
Executive Chamber
State Capitol
Albany 1, N. Y.

Dear Mr. MacCrate:

I have your request for comments on Assembly Bills, Introductory Numbers 2991, 4920, 4924 and 4926.

The enactment of these bills is a necessary incident to the re-organization of our Courts. They, therefore, have the approval of the Justices of this Court who recommend that they be enacted into legislation.

Sincerely yours,

Harold J. McLaughlin
President Justice

HJMcL:FT

FORM B-201 (9/61) BUDGET REPORT ON BILLS Session Year: 1962

30-Day Bill

SENATE **Introduced by:** **ASSEMBLY**

Pr: Mr. Brook Pr: 5218

Int: Int: 4924

Law: New York City Civil Court Act (New) **Sections:** Various (New)

Subject and Purpose: To establish a civil court for the city of New York to implement article six of the constitution of the state of New York, approved by the people on the seventh day of November, nineteen hundred sixty-one.

Division of the Budget recommendation on the above bill:

Approve: X **Veto:** _____ **No Objection:** _____ **No Recommendation:** _____

1. Purpose of bill: See above.

2. Summary of provisions of bill: This bill:
   (1) Establishes the New York City Civil Court effective September 1, 1962
   (2) Provides that the appellate divisions of the supreme court in the first and second judicial departments should have all the powers heretofore conferred by law upon the chief justice of the city court and upon the president justice and board of justices of the municipal court.
   (3) Provides that all personnel costs and other expenses will be a New York City charge.
   (4) Continues the justices of the city court and the municipal court as civil court judges.
   (5) Provides that official referees of the city and municipal courts will continue as official referees of the civil court for the remainder of their terms.
   (6) Provides that all cases of the abolished courts shall be transferred to the proposed civil court.
   (7) Provides that all facilities, equipment and supplies of the city court and the municipal court shall be vested in the proposed civil court.
   (8) Provides that all appropriations for the city court and the municipal court shall be transferred for the use of the civil court.

3. No comment.

4. Arguments in support of bill: Section 15 of Article VI of the State Constitution provides for the establishment of a single court of citywide civil jurisdiction. This bill, therefore, implements Article VI of the Constitution which was approved by the people in November 1961.

5. - 7. No comment.

8. Budgetary implications: Although this bill as such has no budgetary significance concerning the salaries of the civil court judges, a bill (Senate Intro. 3948, Print 4750) passed by the Legislature provides State aid in the amount of $10,000 for each civil court judge in New York City providing they accept the provisions of the bill. On September 1, 1962, 95 city and municipal court judges will become civil court judges. At $10,000 per judge for 3 months (The State aid bill

Date: _____ **Examiner:** _____

Disposition: **Chapter No:** **Veto Date:**

110

becomes effective on January 1, 1963), the total cost to the State for 1962-63 will be $237,500 and $950,000 thereafter.

Date: April 13, 1962 Examiner: Louis R. Tenenini

Disposition: Chapter No.: 9 Veto Date:

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

JOHN ROBERT BROOK
CHAIRMAN
JUDICIARY COMMITTEE
15 BROAD STREET
NEW YORK 5, N.Y.

MEMBER
CITY OF NEW YORK
RULES
TAXATION
COMMITTEES

A-4924

April 5, 1962

Hon. Robert MacCrate,
Executive Chamber,
State Capitol,
Albany 1, N. Y.

Re: Assembly Int. 4924, Print 5218

Dear Bob:

The above bill is the bill which establishes the New York City Civil Court.

This is the creation of the Joint Committee on Court Reorganization, of which I am a member, and undoubtedly you have before you copies of our reports on the same.

Sincerely yours,

Bob.

JRB:FMW

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 36

SPECIAL COMMITTEE ON THE REORGANIZATION OF THE COURTS

JAMES H. HALPIN, CHAIRMAN
120 BROADWAY
NEW YORK 5, N. Y.
WORTH 2-2000

ANTHONY S. GENOVESE, SECRETARY

EDWARD Q. CARR, JR.
ARTHUR H. CHRISTY
A. FAIRFIELD DANA
LAWRENCE EBSTEIN
SEYMOUR GRAUBARD
ROGER BRYANT HUNTING
JACOB L. ISAACS
WILLIAM L. LYNCH
WILLIAM G. MULLIGAN
EDGAR J. NATHAN, 3RD
SHELDON OLIENSIS
SOLOMON I. SKLAR
DAVID S. WORGAN

A 4924

April 13, 1962

Robert MacCrate, Esq.
Counsel to the Governor
Executive Chamber
Albany, New York

Re: A. Int. 4924, Pr. 5218

Dear Mr. MacCrate:

This bill, which is essentially a revision of the existing Municipal Court Code, is approved with the urgent suggestion that provision be made for a study leading to the drafting of an entirely new code for the New York City Civil Court. Only the necessity of having a Civil Court Code on the books by September 1, 1962 compels the approval of this bill.

The establishment of the new court provided a unique opportunity for the creation of a modern practice act, designed to fit the particular requirements of this court; the new bill, unfortunately, has wholly failed to make use of this opportunity.

We have previously expressed our views with respect to this bill in a letter to the Albert Committee, a copy of which is attached for your information.

Very truly yours,

James H. Halpin

JAMES H. HALPIN
Chairman

Enclosure

THE JUDICIAL CONFERENCE
OF THE
STATE OF NEW YORK
270 BROADWAY
NEW YORK 7, N. Y.
BARCLAY 7-1616

CHARLES S. DESMOND
CHAIRMAN

BERNARD BOTEIN
GEORGE J. BELDOCK
FRANCIS BERGAN
ALGER A. WILLIAMS
OWEN McGIVERN
WILLIAM B. GROAT
KENNETH S. MacAFFER
ROBERT E. NOONAN

THOMAS F. McCOY
STATE ADMINISTRATOR

S 59"

April 5, 1962

Hon. Robert MacCrate
Counsel to the Governor
The State Capitol
Albany, New York

Re: Senate Int. 3493, Print 4500
" Int. 3494, Print 4501
" Int. 3719, Print 4069
" Int. 3721, Print 4071
" Int. 3724, Print 4602
" Int. 3726, Print 4076
" Int. 3917, Print 4677
" Int. 3918, Print 4678
" Int. 3933, Print 4722
" Int. 3934, Print 4723
Assembly Int. 4920, Print 5214
" Int. 4924, Print 5218
" Int. 4926, Print 5905
" Int. 4921, Print 5215

Dear Mr. MacCrate:

This will acknowledge your request for comments and recommendation upon the above listed bills, all of which are recommended by the Joint Legislative Committee on Court Reorganization.

These fourteen bills are part of the implementing legislation required to make effective the provisions of the new Judiciary Article which becomes operative on September 1, 1962.

The Judicial Conference has not officially passed upon the detailed provisions contained in these bills. Indeed, to do so would require a period of study at least as lengthy as that required to draft the proposals.

The matter of approving implementing legislation under which the court structure can function in September is an overriding necessity. At this juncture it would be unwise for any reason to postpone approval of this package of bills. Judges,

administrators, clerks and lawyers alike must be able to plan the processing of cases under the new court system and must have available to them the detailed provisions under which they will function.

I would recommend that all of the bills proposed by the Joint Legislative Committee on Court Reorganization be approved.

Sincerely yours,

Thomas F. Finnegan
State Administrator

TFM:ah

LEAGUE OF WOMEN VOTERS
OF NEW YORK STATE

131 EAST 23rd STREET • NEW YORK 10, N.Y. • OR 7-5050

Mrs. John Fitchen, President

LEGISLATIVE MEMORANDUM

A.I. 4924, P. 5218
S.I. 3960, P. 4779
A.I. 4926, P. 5905
A.I. 4920, P. 5214

Civil Court for the City of New York

A.I. 4924, P. 5218 S.I. 3960, P. 4779

The bill establishing the Civil Court for the City of New York was received from the Executive Chamber without the Senate bill (S.I. 3960, P. 4779) which amends two of its sections (Section 2 and 3). These amendments involve the establishment of the court as a single city-wide court and its administration by the Appellate Divisions. It would conform this language to that used in the Criminal Court Act. Our comments on the failure of the Judicial Administration bill to mandate single administration for the New York City courts are equally applicable here. However, the language in the Senate amendment (S.I. 3960, P. 4779) is much to be preferred to that in the Civil Court bill itself (A.I. 4924; P. 5218).

We approve the granting of maximum constitutional monetary jurisdiction to this court (Section 6) as this will tend to relieve some of the pressures on the Supreme Court within the City of New York.

We strongly endorse Section 183 of this bill which requires the Appellate Divisions in the first and second departments jointly to adopt the rules to implement and facilitate procedure in this court. Uniformity of court rules throughout New York City is highly desirable.

A.I. 4926, P. 5905

This bill corrects and amends existing law to conform to Article 6 of the Constitution and the new Civil Court Act of the City of New York. We have no comment.

A.I. 4920, P. 5214

This bill provides for the number of judges in the Civil Court and the filling of future vacancies on this bench. This court will be staffed by judges from the present Municipal Court (elected on a district basis) and City Court (elected on a county basis). This bill provides that vacancies will be filled by the electors of the county or district from which the judge whose term is expiring was elected. It is deplorable and alien to all concepts of court reorganization that judges of a single court are to be selected on two different bases. We regret extremely that a uniform method of selection is not provided in this bill.

14 VESEY STREET — FACING ST. PAUL'S
NEW YORK 7, N. Y.
CORTLANDT 7-6646

Reply to:
Harry Sokel, Esq.
150 Broadway
New York 38, N. Y.
Worth 2-6537

April 13, 1962

Hon. Nelson A. Rockefeller
Executive Chamber
Albany, N. Y.

My dear Sir:

The Committee on the City Court of the New York County Lawyers' Association has approved the following bills and believes that they should become law:

A. Int. 4924 Pr. 5218
A. Int. 4926 Pr. 5905

A copy of each report recommending approval is enclosed.

Very truly yours,

JAMES J. REGAN,

Chairman, Committee on State Legislation.

INTRODUCED BY ASSEMBLYMAN BROOK
INTRODUCED BY SENATOR ALBERT

April 13, 1962 Report No. 216 A. Int. 4924 Pr. 5218
Same as S. Int. 3717

NEW YORK COUNTY LAWYERS' ASSOCIATION
14 Vesey Street - New York 7

Report of Committee on the City Court on Assembly Bill Int. 4924 Pr. 5218, same as Senate Bill Int. 3717, which seeks to repeal Chapter 539 of 1926, 279 of 1915, in relation to establishment of a Civil Court for the City of New York.

RECOMMENDATION: APPROVAL

The consolidation of the Municipal and City Courts in the City of New York into one Civil Court will streamline justice in New York City. It is a long needed reform, and it will benefit attorneys and litigants alike. It will undoubtedly help relieve congestion in the Supreme Court. It will simplify court procedures and practices.

Respectfully submitted,

COMMITTEE ON THE CITY COURT,

Harry Sokel, Chairman.

Report prepared for
the Committee by
MR. HARRY SOKEL.

CORRECTIONAL PROGRESS, CRIME PREVENTION, STUDY AND TREATMENT

THE CORRECTIONAL ASSOCIATION OF NEW YORK

(Formerly The Prison Association of New York)

135 EAST 15th STREET
NEW YORK 3, N. Y.
TELEPHONE ALgonquin 4-7813

Founded 1844 Incorporated 1846

April 6, 1962

A4924

Hon. Robert MacCrate
Executive Chamber
State Capitol
Albany 1, New York

Re: Assembly Intro 4924, Print 5218
By Mr. Brook
APPROVED

Dear Mr. MacCrate:

The purpose of this bill is to establish a civil court in the City of New York as a result of the Constitutional Amendment adopted last fall. The need for a reorganization of the court system throughout the State, with particular reference to the New York City area, has long been recognized and the observations and activities of many groups, including this Association, finally resulted in legislative action which ultimately gave the people an opportunity to vote for an amendment to the Constitution.

The above bill is basic in the area of civil court administration and the reasons for its approval have been stated at length in various connections and memoranda submitted during the two legislative sessions and particularly during the 1962 Session.

It seems unnecessary in giving our overall approval to cite details at this time, since all of that information is undoubtedly available to the Governor and yourself.

Therefore may we be recorded in favor of the above bill and urge the Governor's favorable action.

Sincerely yours,

E. R. Cass

ERC:fh

General Secretary

STATE OF NEW YORK
DEPARTMENT OF AUDIT AND CONTROL
ALBANY

A 124

ARTHUR LEVITT
STATE COMPTROLLER

April 6, 1962

IN REPLYING REFER TO

REPORT TO THE GOVERNOR ON LEGISLATION

To: Hon. Robert MacCrate, Counsel to the Governor

The following bills are of no interest to this Department:

ASSEMBLY Int.	Pr.
624	3595
942	942
1145	S.4707
1196	1196
1214	1214
1527	1527
1536	5246
1599	1599
1765	5305
1797	S. 4719
2205	5735
2357	2366
2474	5686
2545	5588
2652	5481
2890	4457
2991	5901
3046	5281
3253	3350
3262	3359
3600	5831
3606	5337
3653	3774
3682	3803
3688	3809
3742	S. 4685
3787	3916
3959	4098
4077	5290
4131	4315
4248	4447
4260	4481
4332	5458
4341	4580
4562	4832

159

ASSEMBLY	Int.	Pr.
	4593	5721
	4650	4942
	4668	5728
	4670	5891
	4795	5889
	4920	5214
	4924	5218
	4926	5905
	5004	5547
	5011	5554
	5025	5584
	5026	5585
	5028	5596
	5032	5600
	5047	5641
	5057	5697
	5075	5759
	5090	5798
	5093	5807
	5100	5814
	5114	5850
	5116	5852
	5121	5872
	5160	5958
	5165	5965
	5173	5879

SENATE	Int.	Pr.
	404	2991
	1358	4769
	3142	4190
	3641	4762
	3937	4726
	3960	4779
	3962	4781
	2298	6006
	2880	5856
	3069	3145
	3702	3823
	3800	4376
	4565	5684
	5019	5578
	5027	5595
	5029	5597
	5060	5916
	5111	5826
	5152	5956
	5172	5978

ARTHUR LEVITT
State Comptroller

By

Alfred W. Haight
First Deputy Comptroller