

1934

Year

597

Chapter

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State of New York

In Senate

~~APR 20~~ APR 10 1934

Ordered, That the Clerk deliver the bill entitled:

SENATE

3d Rdg. 219

Nos. 842. 1848

Int. 779

An act to amend the legislative law, in relation to creating the law revision commission, defining its powers and duties, and making an appropriation therefor

to the Assembly and request its concurrence in the same.

By order

Marguerite O'Connell,

Clerk.

IN ASSEMBLY

APR 11

Passed with the following
amendment

By order of the ASSEMBLY

Frederick B. Johnson
CLERK

IN SENATE
AMENDMENTS CONCURRED IN

APR 20 1934

By order of the SENATE

Marguerite O'Connell
CLERK

JOSEPH J. CANAVAN,
SECRETARY TO THE GOVERNOR.STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY

March 6, 1934.

TO THE LEGISLATURE:

The State is charged with the administration of justice. This duty has been discharged in different ways in the different epochs of history. Originally, the administration of justice was simple, direct quick and inexpensive. The economic and social changes of recent centuries have transformed it into a process complex, technical, cumbersome and costly. The transformation has come about gradually. Only on rare occasion have the bench and the bar even been alert to the developments.

Today, however, the bench and the bar, and particularly the laymen, are vitally concerned and interested in the immediate improvement and modernization of the machinery of the administration of justice. Today, more than at any time, our citizens, the wage-earner, the merchant, the small and large businessman, demand a machinery that will produce the prompt determination of controversies and disputes with a minimum of formality and technicality and at a moderate expense. In a time of economic depression the deficiencies are intensified. At such times it becomes more manifest that the defects and evils of the judicial branch of government have serious social repercussions. Delay in the administration of justice becomes a denial of justice.

Many of the courts of our State are frightfully behind in their work. The congestion of their calendars and the attendant delay are serious. In some counties of the State it requires as much as thirty months to get a chance to try an ordinary jury case in the Supreme Court. To that period must then be added about six months if an appeal has to be taken. In the City Court in New York City the delay ranges from twenty months to four years. In the Municipal Court the delay generally extends to two and a half years for a trial by jury. While the congestion and delay are more intensified in the courts in New York City and in the counties surrounding it, the same conditions generally exist throughout the State. The delay in some upstate counties is as much as sixteen and twenty-four months.

These conditions of congestion and delay not only result in a denial of justice to the person with a just cause of action, but they encourage unjustified litigation on the part of litigants assisted by unscrupulous lawyers. The intricate formalities and technicalities which have woven themselves into a firm web in the administration of justice offer ready opportunity to deprive a citizen with a proper claim of his due justice. And in result, our citizens shun the courts, distrust their judges and their lawyers. Escape is sought by the creation of arbitration courts and other extra judicial bodies. But beyond this I am convinced that the present administration of justice destroys respect for the law and promotes lack of faith and confidence in government itself.

A short time ago the Commission on the Administration of Justice, which was created at the instance of my predecessor, Governor Franklin D. Roosevelt, submitted its report. I have studied the report with care. It contains many recommendations that are sound and practical and which will go far to eliminate the defects in our present machinery.

A few days ago I invited all the Presiding Justices of the Appellate Divisions of this State to sit down with me and discuss means of correcting the abuses and improving the legal process. To my knowledge this was the first time the Executive ever conferred with the Presiding Justices of this State. Various members of the

Commission were also present. We considered at great length the major recommendations made by the Commission. The Presiding Justices supported the principles and purposes of those recommendations. I found them keen to the needs of the time. And I am glad to say they readily pledged their hearty cooperation and assistance.

The Commission on the Administration of Justice, through its Chairman, Senator John L. Buckley, has already presented to your Honorable Bodies many of the bills effectuating its recommendations.

As the Commission has pointed out, much of the congestion, delay and many defects in the administration can be properly eradicated by the concerted action of the judges themselves. The Presiding Justices of this State have given me assurance that they will do their part toward the achievement of those ends. So in this message I shall devote myself to what the legislative and executive branches may do. Here I shall point out to your Honorable Bodies what I consider the most important and most pressing legislation with the hope that we may enact it into law during this session.

In the first place, I want to urge the enactment of legislation directed primarily to the emergency situation existing in some of our courts. These measures will be temporary. By them the congestion and delay and consequent denial of justice will be quickly corrected.

The solution of the immediate emergency situation lies not in the establishment of more courts and the appointment of more judges. In effect, each judge of the Supreme Court costs the taxpayers one million dollars for the term for which he is elected. The Commission reports that the judiciary of that court is ample for present needs, if its work is properly organized and it is assisted by the legislation which is set forth in this message.

I recommend:

1. A bill which will permit the appointment of temporary referees to decide non-jury cases in the Supreme Court. In this way the regular judges can devote themselves mainly to the trial of cases before juries. In other words, the use of these temporary emergency referees, it is estimated, will free about twenty judges for jury cases. Coupled with this should be a bill permitting the appointment of temporary referees to preside over jury trials, if the litigants consent.

2. A bill which will grant to each litigant the right to examine fully his opponent and his witnesses at any time before trial. This is an important change in legal procedure. It has been tried in other states and there it has worked well. It brings about the settlement of a large proportion of all litigation, and that at a time soon after the action is started. A tremendous load of litigation is thus lifted from the courts,

3. A bill which will empower the court in its discretion to refer automobile negligence cases to a referee whose power will not be to hear and determine the case, but merely to hear and report it to the court. This procedure likewise brings about a large number of settlements at a small expense to the taxpayer. Upon the basis of the experience of Massachusetts, the cost will probably average fifty dollars per case instead of eleven hundred dollars per case; the present cost of a jury trial, for instance, in New York County.

So much for measures directed toward removing the accumulated back log of thousands of cases that have been pending in court for months and years. But in addition to solving this immediate situation, your Honorable Bodies at this time should consider the enactment of legislation from the long run point of view. Such legislation in itself will go far to meet the present emergency situation. I therefore further recommend:

1. The creation of a judicial council as a permanent body composed of representatives of the bench, the bar, the Legislature

and the public. It will serve as an official body to collect data and statistics; it will act as a clearing house of ideas and will recommend to the Legislature advantageous changes in the conduct of the business of the courts. In connection with this, your Honorable Bodies should consider whether the judicial council should be given additional powers. Many so believe. The Commission, however, recommends that as a first step it should have only the powers enumerated. After all, the important thing will be the personnel of the council and the determination and the will of that personnel in a real effort to improve and reform the administration of justice in this State.

2. The appointment of an administrative judge of the Supreme Court. One cannot fail to be impressed by the size and decentralized character of parts of our judicial machine. Each judge more or less moves in a sphere of his own; his work, though intense, is not fully coordinated with that of his associates. Consequently the maximum results from the efforts expended are not obtained. I say this in no spirit of criticism of any members of our judicial system. But I am sure that the appointment of an administrative judge who will act as an executive head of the court will go far in coordinating and organizing the work of a court. He will aid in relieving congestion and delay. Therefore, I urge legislation authorizing and directing the four appellate divisions to appoint an administrative judge in each district.

3. The establishment of a law revision commission. This will be a permanent agency consisting of five members, two of whom shall be scholars of law and one of whom shall be a layman. The chairmen of the judiciary committees of the Legislature will serve as ex-officio members. Its function will be the consideration of changes in substantive law and the recommendation of those changes yearly to the Legislature. It will be a continuing body of legislative advisors and experts. No state in the Union to my knowledge has such an agency. It can easily be seen that members of the Legislature, no matter how conscientious and active, cannot properly consider amendments to thousands and thousands of laws affecting in many respects the lives of every citizen. It will be good for the Legislature to have before it a thorough and disinterested recommendation by this commission. Needless to say, the responsibility and ultimate authority for any legislation remain with the Legislature.

Many farseeing members of the bench and bar have advanced a proposal to remove from the civil practice act its procedural provisions and to transfer them to the court rules and then to give the court joint power with the Legislature to make and amend those court rules. This task alone of dividing the civil practice act into substantive and procedural provisions is one that requires continuous and close study. It is a task which could be properly delegated to the law revision commission so that it may present its recommendation to your Honorable Bodies.

4. The establishment of small claims courts. Mr. Chief Justice Taft once said:

"But if the individual in seeking to protect himself is without money to avail himself of such procedure the Constitution and the procedure made inviolable by it do not practically work for the equal benefit of all. Something must be devised by which everyone however lowly and however poor, however unable by his means to employ a lawyer and to pay court costs, shall be furnished the opportunity to set this fixed machinery of justice going."

My recommendation does not call for the establishment of new courts or the appointment of additional judges. These poor man's courts will be set up as branches or parts of existing courts, namely, those of lowest limited jurisdiction. In New York City they will be a part of the Municipal Court. I am convinced that some definite procedure must be created so that persons of small means or no means may procure justice. The present expense for lawyers' services, for pleadings and court costs is prohibitive. The delay alone keeps poor people from asserting their just rights. Our citizens should not be compelled to declare themselves to be paupers or in need of charity in order to secure the help and protection of our courts. Before a court of justice all men must stand on an equal footing.

Before such a tribunal any case involving not more than one hundred dollars can be quickly tried. There will be no jury. A lawyer will not be necessary. Technical procedure, harassing rules of court will be discarded. The litigant will have no costs or very low costs of court. Decisions will be made solely by the judge, but of course they will have to be based on substantive law. Furthermore, such a tribunal can more easily and readily make a successful effort to settle and adjust any dispute.

The creation of small claims courts will go far to remove the congestion in our lower courts. For instance, in the Municipal Court in New York City there were pending over one million cases in 1932. More than half of the non-jury cases that were tried resulted in judgments of less than one hundred dollars. Moreover, I am of the strong belief that only through these courts will true justice be brought within the reach of our citizens of small means. They will rekindle respect for the judiciary and the law. They will strengthen faith in government.

I strongly urge your Honorable Bodies to give careful consideration to all the recommendations transmitted in the report of the Commission on the Administration of Justice. But I urge you especially to weigh carefully the recommendations I have presented in this message and to enact during this session the legislation necessary to carry out those particular recommendations.

(signed) HERBERT H. LEHMAN

THE COMMITTEE ON CRIMINAL COURTS

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105 EAST 22 STREET, NEW YORK CITY
TELEPHONE, GRAMERCY 5 - 2860

S. Int. 779-Prt. 842-Buckley
Law Revision Commission

April 24, 1934

Hon. Herbert H. Lehman, Governor
Executive Chamber
Albany, New York

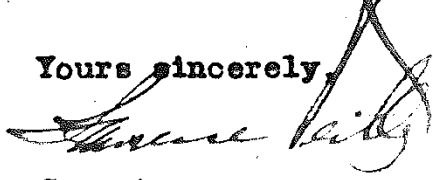
Sir:

I am writing you on behalf of this Committee
to express our approval of the above mentioned bill.

This bill sets up as part of the permanent
machinery of the State a Law Revision Commission whose
function it shall be to study the laws, both civil and
criminal, and to make recommendations from time to time
to the legislature for necessary changes in the statute.

We think this is a very important function
that needs to be performed by some official body and
we are very glad indeed that this measure has passed
the legislature and is before you for consideration.
We hope that it will have your early approval.

Yours sincerely,


Secretary

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EXECUTIVE OFFICES
THE CITY CLUB OF NEW YORK
55 WEST 44TH STREET

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May 9, 1934

Senate Int. 779 - Print A. 2844 - Buckley
Subject: Law Revision Commission

Hon. Herbert H. Lehman
Governor of the State of New York
Executive Chamber
Albany, N. Y.

Dear Sir:

The City Club of New York wishes to be placed on record
in support of this measure.

This bill provides for a continuing Law Revision Commission which is to examine the common law and statutes and the current judicial decisions, to receive from various sources and to consider proposed changes in the law and to recommend to the Legislature such changes in the law as are deemed necessary to bring the law of this State into harmony with modern conditions.

We believe that such a Commission, becoming a sort of liaison between the courts and the Legislature, would perform a very useful service. A very large number of amendments to the Codes and the Civil Practice Act are introduced at each session of the Legislature. They are prepared for the most part by private individuals or organizations, each having a single viewpoint. It is impossible for the individual legislators or the Legislative Committees to devote the time necessary to the study of these proposals. The proposed Law Revision Commission could receive and examine suggestions from the general public and could present well-digested recommendations of its own.

Respectfully yours,

THE CITY CLUB OF NEW YORK,

W. F. Howes

Secretary.

WFH.R

Citizens Union of the City of New York

The Woman's Municipal League, founded in 1894, was united with the Citizens Union in 1923

*A Union of Citizens, without regard to party, for the purpose of
securing the honest and efficient government of the City of New York*

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TELEPHONE BE EXMAN 2-5161

177 WILLIAM STREET, NEW YORK

May 9, 1934.

In re: Assembly Bill No. 2844, Senate Int. 779 -
by Senator Buckley

Honorable Herbert H. Lehman,
Governor,
Albany, New York

Dear Governor Lehman:

The Citizens Union respectfully recommends approval of this bill, creating a law revision commission. Improvement of the law, and correction of defects therein, is now left to individual initiative with the result that necessary changes are impeded or delayed. There is a recognized need which the present bill meets, of a public agency which will make continuing study of the law, and observation of its practical operation, with a view to initiating such improvements and changes as experience may indicate to be necessary.

Very truly yours,

George H. Hallett
Secretary

RW

MORTIMER R. SAMUELS
COUNSELOR AT LAW
5 BEEKMAN STREET
NEW YORK
CORTLANDT 7-6008

Handwritten signature: M. R. Samuels
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May 17th, 1934.

Hon. Herbert H. Lehman,
Governor, New York State,
State Capitol,
Albany, New York.

Honorable Sir:

I have just noted the signing of the bill enabling the establishment of the Law Revision Committee. Permit to extend my best wishes for the success of this novel method in treating a most urgent problem of this day. In that respect, I am joined by many of my colleagues to whom I have spoken in way of this legislation.

Although young in years and in point of experience before the Bar of this State, having been admitted in 1932, my legal training has occupied the last eight years. During that time I have had the opportunity to oversee the administration of justice in the courts of this city and in spare time have made notes and details of rules that impede its progress. At divers times, I have discussed several vital defects in the legal procedure now enforced with brother members of the bar.

At my present command, is a number of suggestions that may, in their small way, aid in furthering the true ends of justice. I cannot address this letter to the committee, for I am given to understand, none has been appointed as yet, for I would be most pleased to forward to that body, my suggestions-which are not only ideas of mine, but of the thoughts

MORTIMER R. SAMUELS

COUNSELOR AT LAW

5 BEEKMAN STREET

NEW YORK

CORTLANDT 7-8008

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and minds of practitioners older, more experienced and more capable than I.

Please do not think me most presuming in writing to you, but you can be assured that I do so only because of a sincere and earnest desire to improve the law-which I have chosen as a life's career and because I have given many hours to this subject of reform. I am actuated by these simple desires. No doubt many members of the Bar have the same suggestions in their minds, and will in the course of time announce the same to the committee, and perhaps to yourself as well.

May I again wish success to the Committee and laud your earnest message to the Legislature to pass favorably upon this law.

Very truly yours,

Mortimer R. Samuels

MRS:M