ation. But he could not endure the idea of the rejoicings in his failure. To work a hardship to another was bad, indeed, and he had never contemplated it without the salve of an ample money compensation. To seek futilely to work a hardship was far worse. Again and again he knit his brows, as he gazed at the treacherous annotations in his hand, while the interchange of glances behind him commented on his attitude and his evident state of mind. Captain Lucy, who could not have read a word of the notes, strode on, apparently indifferent to fate, the "very model of a game rooster," esteeming Kenniston's show of anxiety the merest subterfuge; for would that monument of boundary known as the Big Hollow Boulder have become so nimbly peripatetic, despite its tons of weight, if the line run out therefrom were not to be materially altered for the betterment of the claimant at whose instance the processioning was held?

And still the chain clanked and writhed its length along the ground, and the cries "Stick!" "Stuck!" of the chain-bearers alternated as before, until the sudden call "Out!" resounded, and the surveyor paused to mark the "out" once more.

Charles Egbert Craddock.

COURTS OF CONCILIATION IN AMERICA.

Little more than two years have passed since The Atlantic Monthly presented an outline of the courts of conciliation[1] in vogue in Norway and Denmark, and already the system has been transplanted to American soil. On March 10, 1893, the governor of North Dakota affixed his signature to "an act providing for the establishment of courts of conciliation, and prescribing the mode of procedure in same." This law, which is generally believed to be constitutional, will take effect next spring, when the first set of commissioners of conciliation will be elected.

Some years ago an effort was made to introduce similar tribunals in Iowa. A lawyer of ability, who had been afforded an opportunity to observe the beneficial working of such courts in the Danish West Indies, framed a bill for this purpose, which was introduced in the Iowa legislature. The measure was well received by the lawmakers, but its sweeping character and general cumbersomeness invited attack, and it failed to pass.

The next attempt was made in Minnesota. In 1891, a bill establishing a procedure of compulsory conciliation in all civil cases coming within the jurisdiction of the justices of the peace was introduced in the legislature at St. Paul. If it could have been brought to a vote on its merits, the measure would have passed, for it met with a very general and emphatic approval among the members of both houses. But it was strangled in committee.

Last winter, identical bills were introduced in the legislatures of Minnesota, Wisconsin, and North Dakota. In Minnesota, grain and elevator legislation consumed nearly all the time and attention of the lawmakers. In Wisconsin, the reform encountered but feeble open opposition, yet the passage of the bill was prevented. In North Dakota the measure was stubbornly fought from the beginning, but after a protracted struggle it passed both houses by overwhelming majorities, and became a law.

[1] Courts of Conciliation, The Atlantic Monthly, September, 1891.

The court of conciliation act of North Dakota provides as follows: —

"SEC. I. There shall be elected at the same time and in the same manner as the justices of the peace, in each town, incorporated village, and city, from the qualified voters thereof, four commissioners of conciliation, whose term of office shall be two years, and until their successors are duly elected and qualified. The term of commencement of their office shall be the same as that prescribed for justices of the peace.

"SEC. II. At the time of issuing the summons in any civil action begun before a justice of the peace, the justice shall issue a subpœna summoning two of the commissioners of conciliation elected for the town, village, or city where the action is brought, to appear before him at the time and place designated in the summons, which subpœna shall be served at least three days before the return day, and in the same manner as a summons is required to be served in actions in the district court. If either party fails to appear at the time designated in the summons, judgment shall be entered against the party so failing to appear, as is now provided by statute. If both parties appear, they shall then go before the justice and the two commissioners summoned, as aforesaid, and state their differences, which statements, or so much thereof as is necessary to show the issue between the parties, shall be reduced to writing by the justice and entered on his docket, and shall constitute the pleadings in the case. The parties shall then introduce such evidence as they may think proper in the order and under the restrictions prescribed by the commissioners and justice. It shall be discretionary with the justice and commissioners whether or not the witnesses shall be sworn before testifying.

"After hearing and considering all the evidence offered, it shall be the duty of the justice and commissioners, to the best of their abilities, to persuade the parties to agree to an amicable settlement of their differences on such terms as are just and equitable. If an agreement is reached, it shall be entered by the justice on his docket in the form of a judgment of the court of said justice: Provided, that no agreement shall be entered, unless it can be put in the form of a judgment now authorized by law to be entered by justices of the peace. At the hearing herein provided for, each party must appear in person, or by an agent duly authorized in writing to appear. No attorney shall be allowed in any way to appear or act in any proceeding for either of the parties or otherwise. If at such hearing the parties are not able to agree to an amicable settlement, the case shall be adjourned for trial for such time as the justice shall designate, which shall not be less than one week, and the justice shall allow the parties such time as he may think proper in which to file amended pleadings. The action shall then proceed to trial and judgment as is now provided by law.

"SEC. III. The commissioners shall receive the same mileage and per diem as is now paid jurors. The fees of the commissioners, justice, and officer shall be included in the settlement, and paid by the party designated in the judgment. If a commissioner disobey the subpœna of the justice, he shall be proceeded against in the same manner as a juror who fails to appear when summoned.

"SEC. IV. No part of the proceedings had before the justice and commissioners shall be admitted as evidence or considered at the trial of the case, nor shall the commissioners who took part in the hearing be allowed to testify."

As will be seen, this law is a tentative and modest measure. Its scope is confined to the narrowest limits possible, and within these limits it introduces only such changes in established modes of procedure as were considered absolutely necessary and indispensable. The cham-

pions of the reform understood perfectly well that if they attempted too much failure was inevitable. Preferring a humble victory to glorious defeat, they were content with securing the passage of any law which would put the principle of compulsory judicial conciliation to a practical test in North Dakota. They held, and with good reason, that, should the experiment prove successful, the scope of the law could be enlarged, as experience and expediency might suggest. Their aim was so to engraft the principle of conciliation upon the law of the State that the reform would appear in the nature of a growth from within rather than as an innovation from without.

Compared with the laws of Norway on the same subject, the statute of North Dakota is certainly a very unpretentious, not to say feeble enactment. The Norwegian law of 1824 is a carefully framed act of eighty-seven sections. It has been amended and improved from time to time, the latest amendment (made in 1869) materially enlarging the functions of the tribunals of conciliation. As the law now stands, these courts are statutory peacemakers in all civil cases, with some unimportant exceptions; hence a process of conciliation is, as a general thing, the first step in a civil action. If an adjustment is not reached, the commissioners of conciliation are empowered to arbitrate the controversy at the request of both parties, or to adjudicate the matter at the request of one of the parties, provided the amount involved does not exceed five hundred crowns. The development of the system in Norway clearly points to the final evolution of a thoroughly popular court of original jurisdiction in all civil cases, the aim and purpose of which will be to check the tendency to litigation, and to adjust all controversies upon the lines of the broadest equity.

From the publications of the Norwegian bureau of statistics it appears that during the year 1888 — the last year for which statistics of the civil courts have been published — 103,969 civil actions were begun in Norway. Out of this number 2300 cases were dismissed by the courts of conciliation for various reasons not specified, leaving 101,669 cases to be adjusted amicably, by arbitration or by judicial decision. In 81,015 instances a conciliation was effected between the parties. As an agreement of conciliation has the force of a final judgment, more than four fifths of all civil cases were thus finally disposed of without recourse to a trial of any kind in a court of law. In addition to this number, 7886 cases in which the parties failed to reach an agreement were adjudicated by the tribunals of conciliation. Of 101,669 cases, 88,901, or nearly nine tenths of the whole number, were thus adjusted for the most part amicably, all quickly and cheaply, with but little loss of time and money, and without severing old ties of friendship and mutual good will. Some 12,600 cases, or a little more than one tenth of the whole number, were unhealable, and had to be sent up to the regular district courts of law.

It must be admitted that this is cheap and speedy justice, and it may be added that it is justice of the very best kind, because every peaceable adjustment of a controversy rests upon the voluntary sanction of the contestants. The creditor obtains satisfaction more quickly than in any other way; the debtor avoids lawyers' fees and other expenses, which otherwise would be added to the amount due; and the courts of law are relieved of a tremendous load of irksome work, and are left free to devote their attention to really important litigation, which thus may be disposed of without unnecessary delay. By stopping frivolous quarrels at their very beginning, the tribunals of conciliation ease the working of the entire system for the administration of civil justice. Their wholesome effect upon the temper and social relations of the people is obvious; they repress strife,

and teach forbearance, equity, and common sense.

The court of conciliation law of North Dakota contains only four comparatively brief sections, and is incomplete in many respects. It does not provide for permanent boards of conciliation, sitting at designated times and places, and convening upon their own authority. The parties are not summoned by the commissioners to meet before them; on the contrary, the commissioners are summoned with the parties to appear before the justice of the peace whenever an action is begun. Tribunals thus appointed are necessarily lacking in dignity and independence, and their authority and influence are weakened.

Another defect in the law is embodied in the following clause: "At the hearing herein provided for, each party must appear in person, or by an agent duly authorized in writing to appear."

It ought not to be optional with the parties to appear by an agent whenever it suits their convenience not to appear in person. A personal meeting between the parties, under conditions highly conducive to a free and frank exchange of opinions, is the corner stone of the whole system. The Norwegian law is emphatic upon this point. Sickness and very pressing business engagements are the only excuses recognized for not appearing in person. If a party is represented by an agent when personal appearance is required, he is held to be absent without cause, and must pay the costs in the district court, even if he should win the case. But this defect in the statute of North Dakota, which evidently is due to an oversight, may be easily remedied.

However limited in scope, the court of conciliation law of North Dakota is looked upon as a distinct innovation by the legal fraternity. It has even been asserted that it is the greatest innovation made upon the common law of this country since the adoption of the code. In North Dakota, courts of justices of the peace have jurisdiction in all cases for amounts not exceeding two hundred dollars. As the State is preëminently a rural community, and is likely so to remain, the bulk of litigation comes within this limit. Hence the tribunals of conciliation will have a much wider jurisdiction than would appear from the text of the statute.

The new law was not favorably received by a majority of the lawyers; but nearly all the judges and a number of lawyers of high standing regard it as a step in the right direction. The farmers are well satisfied with it so far as it goes. The merchants were inclined to oppose it at first; but after a more thorough study of its provisions, they have wheeled around, and are prepared to give it their support. The press of the State received it with enthusiastic and all but unanimous commendation.

This friendly attitude of public opinion insures a fair trial of the new system, which is, moreover, more or less familiar to a large part of the population of the State. A far-reaching judicial reform could not be inaugurated under more favorable auspices.

Complaints of slow justice are, perhaps, not more common in the United States than in any other country. But they are much too frequent, nor can it be denied that they are well grounded. Judges are not less able than they used to be. They work as hard and are as industrious as ever, yet they are manifestly unable to keep their dockets even moderately well *à jour*. New courts are established and the number of judges is increased from time to time, but the arrears of cases grow larger instead of smaller; justice is compelled to wait with humble patience upon crowded courts, and pressing controversies grow dusty before they reach a decision.

This evil is a very serious one, especially in many large cities where it has assumed alarming proportions, and it is constantly growing worse instead of

abating. Litigation is increasing more rapidly than population or the general volume of business; hence the pressure upon the courts has a tendency to increase, also. Nor is it difficult to trace the source of the evil. Our modes and rules of civil procedure are a maze of cumbersome technicalities obstructing court business at every turn. When people were few and far between, with little to do and less to quarrel about, this system of civil procedure, so admirable in its logical architecture, undoubtedly served its purpose well; but it is utterly out of date in this age of electricity. It does not begin to meet the wants of crowded, restless modern communities, where people constantly run up against one another, and elbow one another from morn till night. The speed of life is increasing, and social and business relations are becoming more and more entangled. Everybody deals with everybody else. Legislation, in attempting to adjust itself to the constantly changing order of things, only adds to the confusion, because it grows more bulky and less skillful from year to year. While the pressure upon the courts is thus increasing from all sides, as it were, they are fettered by absurd technicalities. They get behind in their work, and justice is kept waiting. But justice delayed very frequently is justice denied.

Courts of conciliation serve the purpose of a judicial breakwater. They arrest the rising tide of litigation. They place no obstacle in the way of any citizen who seeks to obtain justice through the courts; yet, as has been shown, in Norway, nearly nine tenths of all cases arising are peaceably adjusted before these tribunals, while only one in every ten cases comes to trial. This certainly is an immense relief to the law courts. It takes away from them a very tedious and time-wasting drudgery; it keeps frivolous complaints off their dockets, and places the courts in a position for devoting their undivided attention to litigation of importance. With such a check upon pettifogging, annoying delays of justice are prevented; the efficiency of the courts is increased, their authority strengthened, and their dignity better maintained. The people enjoy the invaluable boon of cheap and speedy justice, while the tendency to needless litigation is repressed.

It will probably be generally admitted that the law courts stand in urgent need of relief in some shape. If courts of conciliation afford such relief, that in itself is a good reason why such tribunals ought to be generally established. They are, moreover, in perfect accord with tendencies which assert themselves with increasing emphasis in every sphere of life. To harmonize antagonistic forces, to secure coöperation between conflicting interests, to still strife, — is not this a predominating spirit of modern civilization? Tribunals of conciliation breathe this very spirit into the court-room. If strikes can be arbitrated, why cannot legal disputes be adjusted peaceably? Strikes and lawsuits are equally unprofitable to the parties directly concerned and to the public at large. As a matter of public policy, needless strife in all forms ought to be prevented so far as possible.

In passing, it may be observed that the principle of conciliation should be engrafted upon every system of public arbitration. If this were done, the most common objection to public arbitration of industrial controversies would fall to the ground, and strikes would be more effectually prevented. Strikes very frequently result from misunderstandings and prejudice. A board of conciliation and arbitration so composed as to command the respect and confidence of employers and workingmen would in many instances arrest labor troubles at their inception. If the opposing parties were compelled to appear before such a body before any decisive step were taken by either side, neither would have any ex-

cuse for withholding from the other the privilege of a calm, unprejudiced discussion of their differences. Aided by the friendly counsel and advice of the board, the parties would, undoubtedly, in many instances come to a peaceable understanding; and if they could not reach an agreement, their full and open discussion of the matter would give the board a better insight into the trouble, and thus enable it to arbitrate the matter more satisfactorily to all concerned.

As is well known, a large number of able lawyers maintain a kind of private court of conciliation in their offices. Many of the foremost and most successful lawyers in the country devote their time almost exclusively to the task of keeping intending litigants out of court. Numerous controversies are adjusted in this way, without the aid of courts and judges. Most of the clients of this class of lawyers are people of intelligence and means. They prefer conciliation to litigation, because it is cheaper, quicker, and more satisfactory in every way. Now, tribunals of conciliation will give the poor, ignorant litigants the benefit of a similar mode of settlement. Lawyers who deal with the poorer classes, as a rule, are not peacemakers. Instead of discouraging litigation, they very often incite to strife by playing upon the ignorance and prejudices of their clients. Tribunals of conciliation prevent to a large extent this kind of imposition, with attendant "fleecing." They enable the poor and ignorant to protect themselves by compelling them to stop and think and to appeal to their own common sense, which, if not very keen or reliable, is a better counselor than a pettifogger looking for employment.

As stated in the previous paper, the court of conciliation is a plant of Norse growth. But it is an interesting historical fact that the principle is really of French origin. The idea is a child of the great French Revolution. The tribunals of conciliation which were established in Denmark in 1795, and in Norway in 1797, were only an adaptation of a feature of the system of civil justice created in March, 1790, by the National Assembly of revolutionary France. In his Histoire de la Révolution Française, Louis Blanc gives the following outline of L'Organisation de la Justice by the National Assembly: —

"In conformity with the plan proposed by Thouret on behalf of the committee on the Constitution, the National Assembly created the admirable system of justices of the peace (*juges de paix*). It clothed them with the right to decide without appeal cases involving an amount not exceeding fifty *livres*. There was to be a justice of the peace for each canton, to be elected by the people (*citoyens actifs*) convened in primary assembly. His jurisdiction comprised actions concerning damages caused by man or beast to fields, fruits, or crops; usurpation of land, trees, ditches, hedges and other inclosures; undertakings for the irrigation of lands in the neighborhood; rents, indemnities claimed by tenants, wages of farm hands and other workingmen, libel by word of mouth, quarrels, fights, etc. The object in establishing this system was to rid the rural districts of a veritable scourge; for these paternal magistrates substituted for the strict rigor of the written law the softness of natural equity, and by causing justice to be loved they made it respected. The justices of the peace were considered as being outside of the judicial order, strictly speaking; they were placed on the threshold of the Temple of Justice to warn intending litigants away.

"To summarize, the remarkable system of civil justice established by the National Assembly comprised a judge to conciliate the people, a tribunal to judge them, a system for revising decisions, and a supreme court as guardian of the law for the protection of the people."

The precise character and functions

of these "justices of the peace" might have been better defined by the famous historian; yet it is clear enough that these cantonal courts served as models for the tribunals of conciliation established a few years later in Denmark and Norway. Thouret was evidently familiar with the English system of justices of the peace; he adopted the name of the petty English magistrates for his cantonal courts, and it is not improbable that the suggestive name may have conveyed to his mind an idea akin to the central principles of his courts of conciliation. However this may be, the main purpose of his *juges de paix* was, not to judge, but to conciliate *les citoyens*. They were not considered an integral part of the system of civil justice. On the contrary, they were "placed on the threshold of the Temple of Justice to warn intending litigants away." Here it is clearly expressed that their chief functions were those of a peacemaker. On the other hand, they were empowered to adjudicate a multitude of controversies, and their decisions in small cases were inappealable. But in giving such decisions they were not bound by the strict letter of the law. The first duty of these magistrates, then, was to conciliate litigants. If their efforts in this direction proved unavailing, they had the power to adjudicate the question at issue. But their decisions, if subject to appeal in some instances, were in fact verdicts of arbitration rather than judicial findings.

The Danish-Norwegian reformer, in adapting the institution, substituted for a juge de paix two commissioners of conciliation, who were clothed with no judicial power, and whose duties were confined exclusively to efforts of conciliating litigants by inducing them to adjust their differences peaceably on just and equitable terms, — thus substituting for "the strict rigor of the written law the softness of natural equity." It is curious to observe that the Oldenburg monarch borrowed even the preamble of his ordinance from Thouret's report. In Denmark and Norway, as in France, the object of tribunals of conciliation was expressly to rid the country districts of the scourge of petty litigation.

Meanwhile, the storm of the gigantic Revolution burst upon France. The old society fell shattered before the mighty flashes of avenging liberty, and the country trembled beneath the tread of marching hosts. The beautiful dream of Thouret paled before vistas of fire and blood; the archaic ideal of conciliation vanished during the raging storms of fierce conflicts.

But in the Scandinavian north the conditions were favorable to the growth of the tender, delicate plant. Blighted in the blazing sun of revolutionary France, it attained strength and robustness under the cooler skies of the far north. As the French Constitution of 1791 was revived in the organic law of Norway of 1814, so the most unique feature of Thouret's system of civil justice was destined to take practical shape and attain its most vigorous development in Norway. After the lapse of a century the idea has crossed the North Sea and the Atlantic. It has been embedded in the law of an American commonwealth, and has also been incorporated in the platform of the Liberal party in England, as a link in a series of reforms designed mainly to benefit the common people.

North Dakota is the most Norwegian State in the Union. Not less than one half of her population is of Norwegian birth or descent. This may account for her taking the lead in introducing the Norse system of courts of conciliation. Whether her example will be followed by other States remains to be seen. In any event, the courts of conciliation law now placed upon the statute books of North Dakota is a striking instance of the influence exerted by a body of adopted citizens upon American legislation.

Nicolay Grevstad.