TO PREVENT LITIGATION.

Proposed Conciliation Court.

Interesting Scheme.

The Royal Commission on Law Reform, in its second progress report, recommends the establishment of a Court of Conciliation, on the Scandinavian principle, to bring about the settlement of legal disputes without recourse to expensive litigation.

The general public, in the opinion of the commission, although having every confidence in the honour and integrity of the judiciary and the magistracy, seeks the assistance of the Law Courts only in the last resort. "There is not only a desire on the part of the public to avoid legal proceedings," says report, "but according to the evidence many solicitors endeavour to bring about a settlement of the cases with which they are called upon to deal, without recourse to the machinery of the Courts. It is only reasonable to suppose, and the evidence supports the supposition, that many persons are prepared to suffer injustice rather than avail themselves of the means of obtaining redress which the Law Courts afford. The three principle objections to entering the Law Courts are the cost of litigation, the publicity given to domestic and private affairs, and the treatment to which witnesses are sometimes subjected in cross-examination by opposing counsel. The legal system cannot be considered perfect so long as these objections exist, and the commission have been giving their consideration to the question of how they can best be met. They have come to the conclusion that the remedy lies in the direction of mediation and conciliation. If some solicitors to contending parties can bring about a settlement of disputes it only needs an extension of the system of conciliation to embrace all cases that are capable of successful settlement in that manner."

The commission has considered the system of conciliation which has prevailed in Denmark and Norway for 120 years, and which has been adopted in a few other countries, and feels convinced that the adoption of this system in South Australia, with necessary modifications, will remove most of the objections which the public now has to appealing to the Law Courts for the settlement of their disputes, and that it will tend to reduce considerably the number of cases brought before the ordinary Law Courts.

The Danish and Norwegian Systems.

The law of conciliation in Denmark and Norway dates from 1795, when both countries were under one monarch. Since 1814 they have been separate kingdoms, but, except for minor amendments, there has been no alteration in the conciliation law. Briefly, the system provides for litigants being required to appear before a Conciliation Court personally, with the object of endeavouring, without the assistance of lawyers, to settle their disputes by conciliation before they can have access to the ordinary Law Courts. The Conciliation Court in Copenhagen consists of three persons, a Magistrate not connected with the Law Courts, appointed by the Minister of Justice; and of the other two, one is appointed by the Magistrates, and the other by the local governing body. The duty of the Court is to endeavour to reconcile the parties, but not to pronounce judgment on the merits of any case except in claims for petty debts. If an agreement is arrived at it has the force of a judgment, but if mediation fails the parties have the right of access to the Law Courts. The Conciliation Court sits behind closed doors, and its proceedings are without prejudice to any action that may ultimately be taken in the Law Courts. As a general rule, both in Denmark and Norway, conciliation is required in all civil cases in the first instance. In the Conciliation Courts of Denmark in 1922 116,115 cases were dealt with, and 36,302 (32 per cent.) were adjusted or settled. The Conciliation Board of Christiania, Norway, in the same year, settled 6,900 of the 10,263 cases dealt with, a percentage of 67.

Advantages Claimed.

The Commissioners was much influenced by the evidence of Professor Coleman Phillipson, and especially quotes some of his arguments:—

> The meeting of the Court is not public. There is no prying public watching the discomforts of friends or enemies suffered in the trials and tribulations of the parties. The Commissioners are bound to secrecy, and the parties can speak openly and freely, because admissions and concessions made by a party cannot, as such, be used against them if the attempt at conciliation fails and the case is taken to the Court of Law. . . . The atmosphere of the Conciliation Court is one of simplicity, informality, directness, and frankness. It has a soothing effect on the parties who come in a friendly spirit. The Commissioners are esteemed as upright and kindly men and sincere peacemakers, free from considerations of politics and partisanship. There is no counsel and no curious public. Witnesses may appear in support of the parties' claims if that is considered desirable. If the ordinary process of conciliation fails the Commissioners may, at the request of the parties, act as arbitrators. The beneficial results of the system are several. Much litigation is due to trifling or imaginary grievances and some to the advice of lawyers, who are always ready for a fight. Conciliation prevents a considerable proportion of such lawsuits; I should say an enormous proportion is prevented. Then another beneficial result of the system is that great relief is afforded to the Courts of Law by the existence of these Conciliation Courts. The justice administered is speedy, inexpensive, and does not lead to ill will and enmity. . . . The system fosters in the people a spirit of voluntary fairness and straight dealing, and discourages a resort to legal quibbles and subtle technicalities, so that the commercial and social relations of the people are placed on a more salutary basis.

A Case for Conciliation.

One case with respect to which the commission took evidence is held to be strikingly illustrative of the expense to which litigants, though successful, are at time subjected, and a type of case which might well be settled by conciliation. This was the case in which Mrs. I. L. Harris sued her brother, O. L. Jenkins, for one-fifth interest in their father's estate, of which the latter was the surviving executor and trustee. Having reviewed the facts of the case, the report states:—"It seems to the commission that this was a case which should not have come into the Law Courts at all. The defendant had paid £2,000 each to three sisters which he need not have paid, and he was prepared to pay £200 to the fourth sister in order to prevent his family affairs being brought before the Courts. Until she saw Mr. Waterhouse the plaintiff had no desire to make any claim on her brother. After she had decided to do so she was prepared to accept £200 in full settlement, and the defendant paid that amount for that purpose, and yet the case was subsequently taken through three Courts. The responsibility for this rests more with the solicitor apparently than with his client. He may have had the strongest belief that Mrs. Harris had a good case, but he was unable to find any Court that agreed with him or with the counsel that advised him. The commissioners are unanimous in the opinion that in cases such as this the assistance of a Court of Conciliation would be extremely useful. It would be likely to have the effect of bringing the parties together rather than placing them at arm's length, and the advice of a skilled Magistrate would be valued by the parties more than the advice of solicitors who would benefit pecuniarily from the prolongation of the case."

Recommendations.

The commission therefore recommends:—

1. That a Court of Conciliation be established in the metropolitan area, and that power be given to the Governor in Executive Council to proclaim other Conciliation Court districts from time to time.

2. That the Court shall have power to deal with all civil cases, with exceptions such as:—Cases in which the defendant lives or is domiciled outside South Australia; urgent cases (as, as cases in which it is believed the defendant is about to absconds); petitions for divorce; maritime cases; cases relating to customs and excise; and cases of ejectment.

3. That it shall not be lawful to take proceedings in the class of actions referred to in recommendation No. 2 as being within the jurisdiction of the Conciliation Court until the Conciliation Court has certified that it has been found impossible to effect conciliation.

4. That the Conciliation Court for the metropolitan district consist of three members—a President, who shall be a Special Magistrate to be appointed by the Governor, and two reputable persons to be nominated by the local governing bodies in the districts over which the Court has jurisdiction.

5. That the Special Magistrate and the officers of the metropolitan Court be paid by salaries and the other two members of the Bench by fees.

6. That it be provided that parties to a suit must appear personally before the Conciliation Court without legal advisers, but that in the case of the illness of one of the parties the appointment of a deputy with written instructions from his principal be permitted, provided that no lawyer or lawyer's clerk may act as a deputy.

7. That the Conciliation Court have power to compel the attendance of witnesses to testify to the facts of the case as stated by the parties, and that if the Court is satisfied that a case has not been properly place before it, it shall have the power to decline to certify that conciliation has failed.

8. That the parties to a suit shall be entitled to hear each other's statements of the case, that all proceedings in the Conciliation Court be conducted with closed doors, and that all admissions or concessions towards settlement be entirely without prejudice to any action that may follow in the Law Courts.

9. That the following fees be paid by the plaintiff desiring to bring a case before the Conciliation Court:—Lodging complaint, 2/6; service of notice on defendant, 2/6; hearing fee, 5/; provided that the Court may have power to order that portion or the whole of these amounts be paid by the defendant.

10. That the Conciliation Court shall have power to deal with cases which may be withdrawn from the ordinary Law Courts with the consent of both parties, with the object of the cases being referred to the Conciliation Court for settlement.

The report is signed by Messrs H. D. Young (Chairman), T. Glover, H. Tassie, F. W. Birrell, A. J. Blackwell, Peter Reidy, and A. W. Robinson.