

# REPORT

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### SELECT COMMITTEE ON COURTS OF ARBITRATION.

THE Select Committee appointed to inquire and Report as to the best means of giving practical effect to the Resolution of the House of Representatives of date August 8th, anent the establishment of Courts of Arbitration, have the honor to report as follows :—

In entering upon the very important inquiry devolved upon them, it appeared to your Committee that their chief duty was to procure evidence as to the existence and practical working of Courts of Arbitration in other countries.

Their attention has accordingly been directed mainly to this point, and although the information to be obtained here is somewhat limited, they have nevertheless found sufficient to warrant them in reporting that in France, in the Northern States of Europe, and in some of the South American States, the system of arbitration has been for many years in operation with marked success. It appears that in the French Code of Civil Procedure eleven sections are devoted to the proceedings in conciliation, and that they are not found defective in details is proved by the fact that in a single year 726,566 cases were settled in that way.

The following quotation from the journal of a resident in Norway during the years 1834, 1835, and 1836, by Samuel Laing, Esq., will serve to show the working of the system in that country :—

“The Court of first instance, the lowest in Norway, if it can be called one, is the parish Court of Mutual Agreement. This is a modern institution, which does honor to the wisdom and liberal spirit of the Danish Government. It is the first great and decided improvement upon the old modes and forms of administering justice which has been attempted by any of the ancient Governments of Europe with success. It is a legacy from her former masters for which Norway should be grateful. In every parish the resident householders elect, every third year, from among themselves a person to be the Commissioner of Mutual Agreement. He must not practice law in any capacity, and his appointment is subject to the approval of the Amtman, or highest executive officer of the district. In towns or large and populous parishes there are one or more assessors, or assistants to the Commissioner, and he has always a clerk. He holds his Court once a month within the parish, and receives a small fee of an ort (nine-pence) on entering each case. Every case or lawsuit whatsoever must pass through this preliminary Court, in which no lawyer or attorney is allowed to practice. The parties must appear personally, or by a person not professional. Each states his own case, and his statement is entered fully and to his own satisfaction in the protocol of the Commissioner, who must then endeavour to bring the parties to an agreement by proposing some middle course upon which both may agree. He acts, in short, as a private arbiter would do, and gives his opinion or judgment accordingly. If both parties agree to his finding or advice it is immediately taken to the local Court of law, or Sorenskriver's Court, which is also held within each parish, to be sanctioned, revised as to rights of any third parties, and registered; and it has, without expense, the validity of a final decision. For instance, if a person owes a simple debt, he must be summoned by the creditor to the Court of Mutual Agreement. The debtor may explain that he cannot pay the claim in money, but will pay it in corn or goods, or against a certain time, or has counter claims which extinguish part of it. All the statements of both parties are entered fully by the Commissioner in his protocol, and to their own satisfaction. He then proposes what he conceives may suit both parties; such as a reasonable time to sell the corn or goods, or a reasonable deduction for the counter claims. If both agree the proposal is immediately registered. If one agrees, but the other does not, the party not agreeing appeals to the local or Sorenskriver's Court, which sits once, at least, in each parish in every quarter of a year; but he will have the expense of both parties to pay if the terms of agreement proposed and rejected are judged not unreasonable. In this higher Court, but which is, properly speaking, the lowest legal one, the parties appear, if they choose, by their law agents or procurators; but in this, and all the subsequent or higher Courts through which a case may be carried, nothing is received but the protocol of the Court of Mutual Agreement—no new matter, statements, or references to evidence but what stand in the Commissioner's protocol. This is the best part of the institution. It confines the lawyer to his law, and brings the facts of the case, as understood by the parties themselves, before the Court without trick or disguise. Much legal talent is expended in our Courts in cross-examining witnesses, brow-beating the dull and honest, involving in contradiction the equally honest of quicker temperament, and working on the personal temper of witnesses in order to bring out such an appearance of a case as may deceive the judgment of an ordinary jury. This is all a very fine display of talent, but altogether inconsistent with the substantial ends of justice. It may happen that the practised Judge himself cannot always disentangle the truth from the contradictory statements which the ingenuity of the lawyer has contrived to twist round it. All the chicanery, which is the glory, and ought to be the shame, of the British bar, is cut off by the simple Norwegian arrangement, by which the only facts admitted to proof, or to legal argument, are those stated, together with the evidence on which they rest, in this protocol.”—(Laing's Residence in Norway, ch. v., pp. 144-145.)

At a later period, in a work published in 1857, Mr. Loring Brace,—when travelling through Norway, Sweden and Denmark—speaking of these Courts, says, “One of the most characteristic institutions of Norway is the Court of Compromise. It is of Danish origin. The arbiter or judge, who may be of any profession but the law, is elected in every parish by the resident property owners, once in three years. In the larger parishes he is allowed assistants. He serves for a merely nominal salary; every case whatsoever must be brought before him, but always by the parties personally; no lawyer's aid is allowed. The statements of each of the litigants is entered on the minutes of the Court, and the arbiter decides between them. If they accept his opinion as final it is brought to the Justice Court, and, if approved, entered, and becomes a legal decision. If one or the other objects to