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Omar E. Garwood

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## Constitutionality of Conciliation Courts

## Constitutionality of Conciliation Courts

BY OMAR E. GARWOOD\*

Conciliation or small claims courts usually prohibit the appearance of attorneys on behalf of litigants and bar jury trials; the purpose of such provisions is to avoid the expense and delay incident to the adjudication of small claims. Constitutionality has been challenged on the ground that depriving a litigant of the right of counsel or jury is a violation of due process. But it is held that this right is preserved where, as in California, informal hearings are held without the assistance of counsel provided the right to appear by counsel is guaranteed in a real sense somewhere in the proceeding. There the defendant may appeal to a court of record and may be represented on appeal by counsel and enjoy a trial *de novo*; in this manner all his rights are preserved and the due process requirement is satisfied.

In the case of *Prudential Insurance Co. v. Small Claims Court*, 173 Pac. (2nd) 38, 40, it is said:

"Justice should not be a rich man's luxury. The Magna Carta guaranteed that justice would not be denied or delayed. Ever since 1215 those interested in the administration of justice have struggled somewhat unsuccessfully to live up to that promise so far as poor litigants are concerned. The delay and expense incident to litigation have long discouraged the attempts of the poor litigant to secure redress for claims meritorious but small in amount. These cases are relatively of as great importance to those litigants as those heard in our highest courts, but the expense of employing an attorney and paying normal court costs is more than the cause will bear. The solution to this problem arrived at not only by many states in the United States, but also in England, and in many continental countries, has been to create small claims or conciliation courts where such claims may be prosecuted informally and without the cost, delay, or procedural difficulties incident to normal litigation."

In Minnesota the constitutionality of a statute creating a conciliation and small debtors' court which barred juries was upheld on the ground that the constitutional guaranty is satisfied if jury trial is afforded on appeal.<sup>1</sup>

The Supreme Court of the United States has also upheld the constitutionality of such courts.<sup>2</sup>

It is worthy of note that both legislative and judicial departments of federal and state governments lend encouragement to the maintenance of conciliation courts.

\*Of the Denver Bar.

<sup>1</sup> *Flower City Fuel & T. Co. v. Young*, 185 NW 934, 150 Minn. 452.

<sup>2</sup> *Capital Traction Co. v. Hof*, 174 U. S. 1, 19 S. Ct. 580, 43 L. Ed. 873.