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## Justice Courts

BY CLARK W. KINZIE\*

Having read with a great deal of interest an article entitled *What Price Justice* published in the February 1947 issue of DICTA, Bulletin No. 4 of the Colorado Judiciary Committee, and an article in the January 1947 Coronet entitled *Highway Robbery Coast to Coast*, and being a justice of the peace myself, I feel that a few words in self defense is not out of place.

Mr. Sherlock states that the justice of the peace in America arrived with the Mayflower and has not been improved since that day. Isn't the same true to a great extent of our other courts? While they may have been improved to some degree, we still cling to a lot of the forms, phraseology and law established in England long prior to the time of the Mayflower.

The office of justice of the peace need not be criticized on the system of fee collection, as Chap. 66, Sec. 37, '35 C.S.A. provides that such officer shall collect every fee in advance if the same can be ascertained. If the costs are paid in advance as required by law, there is no more reason to believe that the justice will find for the plaintiff, than if the action were brought in a court of record, where a docket fee is required upon the filing of the action. Personally I cannot subscribe to the statement in DICTA, which states that in criminal cases it is always better business to find the defendant guilty and squeeze the costs out of him than to let him go and try to collect from the county. There should be no reason to question the costs account of the justice, by the county, as he usually turns in more in fines each month than the costs in the acquitted cases would amount to in several months. In passing I believe I should state that more than 90% of the fines and costs collected by my court have been upon a plea of guilty.

Resolution No. 1 mentioned in the above copy of DICTA casts no reflection upon the justice of the peace or police judge, but rather upon the desire of the board of trustees of the Village of Ruidoso to obtain the services of the justice of the peace at no expense to the village.

The office of justice of the peace undoubtedly has in some instances been misused, either intentionally or unintentionally, but the same criticism may be made in regard to our courts of record, as it is not at all uncommon to have a client delay the bringing of an action until it can be brought with a certain judge upon the bench. Personally I have never thought it made much difference, yet I know from experience that some clients and even some lawyers feel that they cannot get a fair trial or obtain justice with a certain judge presiding, and it is about equally divided, some preferring one judge and some another.

In the above referred to article in the Coronet magazine, Mr. Carlisle, the author, says, "You may be tried by a state court, a county court, a municipal

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court, or a justice of the peace. Whatever the penalty, you will likely lose all respect for our judicial system in general". So it would seem that the offender is going to be held up, without regard to the court in which he is tried. Mr. Carlisle makes some very good suggestions for the improvement of our justice courts or traffic courts, and I may say that more than 90% of the cases tried in the justice courts in our part of the country are traffic cases.

In regard to small claims courts presided over by justices of the peace, there is not objection to the cost of trial or manner of service upon the defendant, but in my opinion there is one clause in the Small Claims Courts Act which should be deleted, as follows:

"No attorney at law or any person other than the plaintiff and defendant shall appear or take any part in the filing or prosecution or defense of litigation in the small claims court".

With the above clause deleted the act should work fairly well, as the matter of representation would be left to the discretion of the litigants, which I believe is a constitutional right. Also there seems to be a widespread habit of having the justice draw the affidavit of claim for the plaintiff, which to my mind is a direct violation of that part of the above clause which prohibits any person other than the plaintiff from taking any part in the filing of the claim. In other words the J. P. who is to try the case is asked to, and often does violate the provisions of the act in order that he may dispense justice when the case comes up for trial. (See August, 1944 issue of DICTA, page 192). The deletion of the above clause certainly couldn't harm any litigant who has a just claim but it would give the defendant who doesn't know what his rights are an opportunity to defend against an unjust claim, and I have reason to know that not all claims filed in the small claims court are just claims.

### Personals

The law firms of Lewis and Grant, and Newton, Davis and Henry have merged under the name Lewis, Grant, Newton, Davis and Henry. The new firm has not yet moved into a consolidated office and is still carrying on practice at the two old locations. The members of the new firm are Mason A. Lewis, Mayor Quigg Newton, Richard M. Davis, S. Arthur Henry, Irving Hale, Jr., Donald S. Graham and Donald S. Stubbs. Quigg Newton is on leave of absence during his term as mayor of Denver.

JOHN H. WINCHELL, has opened an office for the practice of law and has resigned as clerk of the district court, Denver.

LAWRENCE A. LONG, STANFORD L. HYMAN and H. HAROLD CALKINS have formed a partnership under the name of Long, Hyman and Calkins, with offices at 418 Symes Bldg., Denver.