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Advocates Attorneys in Small Claims Courts

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Editor DICTA:

In the June issue of DICTA Mr. Omar E. Garwood presented a very interesting article on the operation of the small claims courts of California, where no lawyer may appear, and stated that "lawyers, judges and citizens in Los Angeles appear to agree that the small claims court has proven to be a definite forward step in the direction of affording prompt, efficient and inexpensive means of adjudicating controversies which are meritorious but too petty to fit into the channels in which ordinary courts administer justice."

Colorado, too, has a small claims court act which appears to be identical with the California act, but in this section of the state, at least, it hasn't worked out so well. I agree that most of the matters tried in the small claims court are too small for a lawyer to spend any time upon, yet the rights of the litigants are the same in small matters as in large ones, and I am a firm believer in the proposition that it is not the legislature, but the litigants themselves who are the proper parties to determine whether or not they should be represented by counsel.

Under our law as it now stands it would be an absolute impossibility for a corporation to bring or defend an action in the small claims court, as our supreme court has held that a corporation can appear by attorney only. I personally know of many cases which have been brought in the small claims court by corporations and prosecuted by the manager or other agent of the corporation, yet the privilege of legal or other representation has been denied to the defendant.

There has always been a grave doubt in my mind as to the constitutionality of the provision in the act that "No attorney at law or any other 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." Since the legislature cannot require a litigant to employ counsel in his own case, it would seem to follow that it cannot deprive him of counsel if he desires to have representation. In a conversation with a member of the legislature which passed the small claims court act, he stated that he was in favor of the act for the reason that nine out of ten claims filed were just claims. I agreed with him on that point but paused to ask what was to be done with the tenth claim that was not a just claim. Is the defendant to be penalized because he has insufficient knowledge of his legal rights and because the last nine cases were valid claims? It appears that the small claims court is solely a creditors' court

with an almost imperceptible chance of the defendant winning his case even though he may have a perfect defense to the action.

A recent case was called to my attention by a defendant in a small claims case wherein it was alleged there was $44 due as house rent. The defendant had absolutely no knowledge as to what his rights were or what had taken place except that his wages had been tied up. Upon investigation I found that garnishment had been made upon his employer at the time the action was brought. An affidavit in attachment had been filed but no attachment writ had been issued and no undertaking had been filed as is required by statute in attachment cases. When the motion was made to quash the garnishee summons upon the ground that the small claims court act contains no provision for attachment, the judge of the court stated that he had handled any number of cases just that way and informed me that I could not appear in the small claims court for any purpose whatsoever. By reason of my intervention, the defendant was allowed to pay $4, which was the amount he admitted to be due, and the case was dismissed; however, I am satisfied that but for someone appearing in behalf of the defendant a judgment of $44 would have been entered against him and his wages tied up without due process of law. His only recourse would have been to have put up over ten times the amount actually owing, plus a docket fee in the county court for the purpose of appealing the case, and he probably would not feel like taking another chance as his own attorney. Where is there any saving in time or money in such a case?

In a majority of cases neither of the parties has a correct idea or knowledge as to what his rights are. The plaintiff usually hasn't sufficient knowledge of legal matters to even draw the affidavit and order required in small claims cases, but leaves it to the judge of the court to perform that duty for him, notwithstanding the provision that no person other than the plaintiff and defendant shall take any part in the filing of litigation in the small claims court. How would the members of the Colorado Bar Association like to have their rights tried before a judge who had drawn the complaint and all other pleadings in the case?

The present law probably works out all right in a majority of cases, but there are many instances where it is subject to abuse which could be entirely eliminated by deleting that portion of the act which forbids the appearance of an attorney at law in the small claims court. Again I say that the parties to the action are the proper parties to determine whether legal counsel is needed or desirable.

CLARK W. KINZIE.