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SMALL CLAIMS PRACTICE IN THE UNITED STATES†

JOSEPHINE Y. KING*

INTRODUCTION

Writing during the years of the first World War, an American attorney who devoted much of his life to legal aid for the poor observed:

The inability to provide justice in small causes has always been one of the weakest points in our system of administering justice. From the days of ordeal by battle the method provided by the common law for proving and reducing to judgment any type of small claim has been cumbersome, slow and expensive out of all proportion to the matter involved.¹

The early twentieth century witnessed an increasing concern with problems of judicial administration.² The system then in existence was inadequate to cope with the volume and nature of litigation generated by the growth in urban population and the industrialization of the economy.³ Justice of the Peace courts, particularly prevalent in rural areas, were poor substitutes for courts of law. Elected lay judges, untrained in the law, dispensed "justice;” their remuneration was often based on a portion of the fees or fines collected from the parties.⁴ Various reforms were undertaken in this

† This Article initially was prepared for the International Congress on Civil Procedure, 1977, for which the author served as National Reporter on Small Claims Procedures in the United States.

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¹ R. Smith, JUSTICE AND THE POOR 41 (memorial ed. 1967) [hereinafter cited as SMITH].
² Pound, The Administration of Justice in the Modern City, 26 HARV. L. REV. 302 (1913) [hereinafter cited as Pound].
³ Pound, supra note 2, at 309-11. The legal system existing prior to the turn of the century was founded upon the premise that America consisted of a “homogeneous population, . . . jealous of its rights, zealous to enforce law and order, and in sympathy with the law . . . a public which may be relied upon to set the machinery of the law in motion when wrong is done . . . . In other words, our common-law polity postulates an American farming community. . . .” Id. at 309-10 (footnote omitted). With the growth of the American city, however, the system had to adapt to a need for efficient administration of the law in an overcrowded urban setting, as well as an emerging need for speedy and simple resolution of minor claims. Id. at 310-11.
⁴ See J. Weiss, LITTLE INJUSTICES: SMALL CLAIMS COURT AND THE AMERICAN CONSUMER 29 (1972); Silverstein, Small Claims Courts Versus Justices of the Peace, 58 W. VA. L. REV. 241,
period, including the introduction of conciliation and arbitration as dispute settlement techniques, as well as the establishment of administrative, small claims, and other new forms of courts. By creating tribunals to adjudicate minor causes, reformers sought to avoid the expense, delay, and complexity of formal procedures, and permit self-representation and prompt decisions. Among the devices utilized to implement these goals were simplified pleadings, relaxation of the rules of evidence, and limitations upon the right to jury trial and to appeal—procedures which have continued to characterize small claims practices to the present time.

The first small claims courts, the Small Debtors' Courts in Kansas and the Conciliation Branch of the Cleveland Municipal Court, were established in 1912 and 1913. The Kansas courts had a monetary limit of $20 and possessed the advantage of informal sessions which could be held outside the courthouse. The statute creating the Small Debtors' Courts prohibited attorneys from "intermeddling" in small claims cases, but continued the unsatisfactory practice of employing lay judges who served without remuneration. In contrast, the conciliation branch in Cleveland appears to have been conducted in a manner similar to a modern small claims court. Trained judges disposed of large numbers of pro se cases, granting equitable as well as common law relief. During the next decade, five states established small claims courts and several other states created conciliation tribunals. This development has continued to the present, with all but a few states now maintaining

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5 For a discussion of the initial development of small claims courts, see Report of Committee on Small Claims and Conciliation Procedure, 10 A.B.A.J. 828 (1924) [hereinafter cited as Report].

6 See SMITH, supra note 1, at 52-53; Report, supra note 5, at 828-32; Yngvesson & Hennessey, Small Claims, Complex Disputes: A Review of the Small Claims Literature, 9 L. & Soc'y Rev. 219, 222-23 (1975) [hereinafter cited as Yngvesson & Hennessey].

7 While the small debtors' court in Kansas was created by statute, 1913 Kan. Sess. Laws, ch. 170, § 1, the Cleveland court was established by court rule. SMITH, supra note 1, at 43, 48. See Note, The Ohio Small Claims Court: An Empirical Study, 42 U. CIN. L. REV. 469 (1973).


9 See id.


11 Small claims courts were created by Massachusetts in 1920, California and South Dakota in 1921, and Nevada and Idaho in 1923, Report, supra note 5, at 828, while Minneapolis and St. Paul, Minnesota, as well as Philadelphia, Pennsylvania, North Dakota and Iowa, established conciliation tribunals. Id. at 831.
a system of small claims courts.\textsuperscript{12}

Despite the wide-spread acceptance of the small claims system, critics have challenged certain assumptions underlying the reform movement. Proponents of small claims apparently believed that the average man’s claim would involve a simple debt which he had a legitimate right to collect. The claim would be uncomplicated to prove, and the parties to the contest would be of relatively equal economic and political status.\textsuperscript{13} In reality, however, small claims litigation in some jurisdictions has afforded a disproportionate advantage to businessmen, collection agencies, and landlords, who can utilize the summary procedure to exploit small debtors.\textsuperscript{14} Criticism also has been directed at the complication of the adjudicatory process when parties are represented by counsel. Finally, successful claimants often experience substantial difficulty obtaining satisfaction of a money judgment.\textsuperscript{15} Notwithstanding these shortcomings, few would advocate the elimination of small claims courts. On the contrary, vigorous and manifold efforts are being directed to improvement in the operation of these forums.

An overview of small claims practice in the United States illustrates commonalities of procedure and purpose evolved from experience, counselled by a sense of fairness and justice, and dictated by practical limitations of judicial administration. Difficulties inherent in the system surface in sharp relief when we examine the operation of small claims courts in the context of a large metropolitan area. A section of this Article, therefore, is devoted to scrutiny of applicable statutory provisions and their implementation in New York City. The statutory framework in California and Michigan is noted for comparative purposes. In addition, the Article will discuss criti-

\textsuperscript{12} Ten states, Arizona, Arkansas, Delaware, Mississippi, Montana, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, have not enacted legislation providing for small claims tribunals. NATIONAL ECONOMIC DEVELOPMENT GROUP, CHAMBER OF COMMERCE OF THE UNITED STATES, COMPARISON OF SMALL CLAIMS COURTS AND THE MODEL CONSUMER JUSTICE ACT (1976). Georgia has no statewide small claims system, but permits certain counties to establish such jurisdiction by local ordinance. 1957 Ga. Laws 2635.

\textsuperscript{13} Report, supra note 5, 830-31.


\textsuperscript{15} See text accompanying notes 43-46 infra.
cisms and recommendations of current relevance to attaining an optimally functioning system for the adjudication of small claims.

A SUMMARY OF SMALL CLAIMS PRACTICES IN THE UNITED STATES

Small claims in the United States usually are adjudicated in special parts or divisions of an inferior court of general civil jurisdiction. No independent tribunal functions solely as a small claims court; most commonly, minor claims are heard in a branch of a court of first instance sitting in each judicial district of the state. In an overwhelming majority of states, the only actions cognizable by the appropriate small claims part are those in which monetary relief is sought, but a handful of states permit claims demanding equitable relief as well. Substantively, the subject matter of minor claims is restricted to tort, contract, and personal property damage suits. A pronounced diversity is evident in the jurisdictional

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17 See note 16 supra.


20 Libel and slander are generally excluded from the class of tort actions which may be brought in small claims court. See, e.g., Colo. Rev. Stat. § 13-6-403(1) (Supp. 1976); Mass.
amount prescribed by the various state statutes. While most states place a ceiling of $500 or less on the value of the claim, almost one-fourth permit claims with a value of $750 or $1000.

Where a fee is prescribed for filing a small claim, the amount is generally $5 or less, although some states have a sliding scale dependent on the amount in controversy. Modes of initiating suits vary from the pleading and notice requirements of the standard civil procedure applicable in the state, to a simple declaration to the


Alaska, which permits arbitrated small claims for up to $3000 in value, Alaska Stat. § 09.43.190 (1977), allows the largest claims of any jurisdiction. In contrast, the District of Columbia and Texas limit most small claims to $150. Generally, standard civil practice need be utilized only to commence the small claims procedure applicable in the state, to a simple declaration to the


In addition to its small claims court, whose jurisdictional amount is $300, Kan. Stat. § 61-2703(a) (1976), Kansas has established a small creditor's court which can be held in the home, office, or place of business of a judge. This forum is designed for indigent plaintiffs and the amount in controversy cannot exceed $20. Id. §§ 20-1301, -1304 (1974).


court clerk who transcribes the pertinent facts on a short form. In jurisdictions employing the latter simplified approach, the clerk will send notice of the claim and hearing date by registered mail to the defendant. Approximately two-thirds of the states do not restrict the persons or entities that may sue in small claims court. Critics of this "open door" policy have pointed out that business organizations and collection agencies as plaintiffs in small claims suits reap undue advantage at the expense of inexperienced individual defendants. In this regard, it should be noted that the number of jurisdictions which bar assignees, many of whom are collection agencies, from small claims court is on the increase. Additionally, some states restrict the number of claims that may be brought by any one plaintiff on the same court day or during a particular period of time.

The trial of minor causes differs significantly from ordinary

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29 See Smith, supra note 1; Note, The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California, 21 Stan. L. Rev. 1657, 1660-62, 1673 (1969). It has been noted that business organizations and collection agencies, by continual use of the small claims tribunal, become increasingly adept at defeating their opponents. Id. at 1662. As a result, the original conception of the small claims process as essentially an arbitration proceeding between two evenly matched lay opponents is undermined. Id. at 1665.

30 The provision barring assignees is of recent vintage in most states. Indeed, three states—California, Michigan, and Utah—have enacted this provision in 1977, perhaps indicating a trend towards excluding assignees from small claims courts.

civil litigation. A majority of states permit informal rules of practice and evidence to govern the proceedings. In perhaps as few as 10% of the systems, mediation or arbitration is available as an alternative procedure, or referees may conduct the hearings and render judgment. The usual practice, however, is to assign judges from the district or other "parent" court to sit in the small claims part. The judge first attempts to mediate or settle the controversy. If such efforts fail, however, the judge will try the case.

With but a few exceptions, small claims litigation is conducted during the normal daytime hours of the court session. Although the parties may be represented by attorneys in almost all small claims forums, a small minority of states do not permit such representation. Similarly, in most jurisdictions the parties do not waive their right of appeal from a judgment of the small claims courts. Less

32 Many statutes permit the small claims judge to dispense with all traditional rules of evidence except those governing privileged communications. See, e.g., CAL. CIV. PROC. CODE § 117 (West Supp. 1977); D.C. CODE ENCYCL. § 16-3906(b) (West 1966); HAW. REV. STAT. § 633-32 (1976); IND. CODE § 33-11.6-4-8 (1976); Mich. Comp. Laws Ann. § 600.8411 (Supp. 1977-1978).

33 The Supreme Court of Alaska may require arbitration in cases where a judgment of money only is sought and the claim does not exceed $3000. The arbitrator is either a member of the Alaska Bar Association or a magistrate appointed and compensated by the court. ALASKA STAT. § 09.43.190, 200 (1977). In the District of Columbia, arbitration and conciliation procedures may be utilized with the consent of all parties. D.C. CODE ENCYCL. § 11-1342 (West 1966). Colorado and Ohio permit a referee to hear the case and render a judgment. COLO. REV. STAT. § 13-6-405 (Supp. 1976); OHIO REV. CODE ANN. § 1925.01(B) (Page Supp. 1976).


35 See notes 132-34 and accompanying text infra.
uniformity attends the recognition of the right to trial by jury. On this question, three major approaches have emerged, each having roughly an equal number of adherents: (a) both plaintiff and defendant are deemed to have waived a jury trial;\(^3\) (b) neither plaintiff nor defendant is deemed to have waived a jury trial;\(^4\) and (c) defendant may elect to transfer the case to the regular division of the court and thereby obtain a jury trial.\(^4\)

Unfortunately, there are no data which reveal the median time required for disposition of small claims in the United States as a whole. The statutorily prescribed period of time from filing a claim to a hearing ranges from less than 1 week to 2 months.\(^4\) Once the hearing date is reached, judgment should be rendered promptly.

A decision in plaintiff's favor, however, does not usually result in an early satisfaction of the claim. Although 80% or more of the judgments rendered in small claims courts are for the plaintiff,\(^3\) approximately 50% of the judgment creditors eventually collect

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\(^{4}\) The statutes uniformly provide for a minimum time period between the reception of notice by the defendant and the date of the hearing, in order to allow the summoned party a sufficient time to prepare his defense. Additionally, there usually exists a cut-off date by which a hearing must be held, reflecting a legislative aversion to “stale” claims. See, e.g., Cal. Civ. Proc. Code § 116.4 (West Supp. 1977) (not less than 10 or more than 40 days for defendant who is resident of forum county; not less than 30 or more than 70 days for defendant not a resident of forum county); D.C. Code Encl. § 16-3902(g) (West 1968) (not less than 5 or more than 15 days); Idaho Code § 1-2306 (Supp. 1977) (not less than 5 or more than 10 days); Iowa Code Ann. § 631.5(1) (West Supp. 1977-1978) (not less than 5 or more than 20 days); Mich. Comp. Laws Ann. § 600.8406(1) (Supp. 1977-1978) (not less than 15 or more than 30 days); N.D. Cent. Code § 27-08.1-02 (1974) (not less than 5 or more than 30 days); Wyo. Stat. § 1-565 (Supp. 1975) (not less than 3 or more than 12 days).

\(^{3}\) See National Institute for Consumer Justice, Redress of Consumer Grievances 14 (1972) (plaintiff prevails in over 80% of the cases); Note, The Toledo Small Claims Court: Part I, 6 U. Tol. L. Rev. 397, 403-04 (1975) (business plaintiffs successful in 96% of cases,
any of the recovery awarded them. Since no attachment or garnishment may issue from a small claims court, the winning party must pursue the usual enforcement procedure and obtain a writ of execution. Unless the defendant has assets known to the plaintiff and discoverable by the sheriff, marshal, or other official authorized to seize such assets, the plaintiff may never recover the amount awarded by the court.

**The New York Model**

The United States, being composed of many diverse judicial jurisdictions, exhibits a wide variety of small claims practice. To aid in understanding the operation of these procedures, it may prove useful to examine one system in detail. The practice in the State of New York, and particularly in New York City, merits consideration since it serves a densely populated urban area and is subject to continuous scrutiny and refinement in an effort to improve its delivery of substantial justice with minimal expense and delay.

**Statutory Provisions**

New York State has not established a separate court for the adjudication of small claims; rather, such claims are heard in a part or division of a local civil or combined civil and criminal court of first instance. The legislature of New York provided in court acts adopted in the 1960's for small claims parts in the Civil Court of the individual plaintiffs successful in 81% of cases); Comment, The California Small Claims Court, 52 CALIF. L. REV. 876, 886 (1964).


46 The judgment is docketed and executed as if it were a judgment of the small claims tribunal's parent court. See, e.g., CAL. CIV. PROC. CODE § 117.7 (West Supp. 1977); D.C. CODE ENCYCL. § 16-3910 (West 1968); HAW. REV. STAT. § 633-35 (1976); IOWA CODE ANN. § 631.12 (West Supp. 1977-1978); ME. REV. STAT. tit. 14, § 7456 (1966); MINN. STAT. ANN. § 491.04(1) (West Supp. 1978); NEV. REV. STAT. § 73.020 (1973); N.D. CENT. CODE § 27-08.1-06 (Supp. 1977); OR. REV. STAT. § 46.485(6)(e) (1975-1976); PA. STAT. ANN. tit. 42, § 1124 (Purdon Pamphlet 1977); R.I. GEN. LAWS § 10-16-15 (1970).

City of New York, the district courts in Nassau and Suffolk counties, and the city courts in cities other than New York. The small claims part in this state dates back to 1934 when it was established as a division of the Municipal Court of the City of New York for claims not exceeding $50. Today the jurisdiction of these parts extends to a maximum of $1000, but the basic philosophy underlying their existence remains the same: by employing a simple and informal procedure, the courts shall “do substantial justice between the parties according to the rules of substantive law . . . .”

1. Jurisdiction and Venue

The Small Claims Division of the New York City Civil Court is empowered to hear claims for monetary relief not in excess of $1000 exclusive of interest and costs. Should the defendant interpose against the original claimant a counterclaim which exceeds the jurisdictional amount, the cause is transferred to the regular division of the civil court. Venue is properly laid in the small claims division if the defendant “resides, or has an office for transaction of business or a regular employment within the city of New York.” There is no requirement that the claimant reside in New York City.

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53 Ch. 598, § 179, [1934] N.Y. Laws 1291.
54 N.Y. City Civ. Ct. Act § 1801 (McKinney Supp. 1977-1978) (raised claim limit to $1,000). Although this Article will focus on the Small Claims Part of the Civil Court of the City of New York, the remaining New York small claims courts operate under statutory provisions similar in nature to those governing the New York City court. See notes 48-50 supra; N.Y. City Civ. Ct. Act, commentary at xiii-xiv (McKinney 1963). There is a small claims court in each of the five counties of New York City, and a sixth branch in Harlem. E. THOMPSON, MANUAL OF THE SMALL CLAIMS PART CIVIL COURT OF THE CITY OF NEW YORK 5 (1973) [hereinafter cited as MANUAL]. Judge Thompson was formerly the Administrative Judge of the Civil Court of the City of New York. See CSS REPORT, supra note 47, at 3.
57 Id. § 1805(b) (McKinney 1963). The general jurisdiction of the New York City Civil Court encompasses actions and proceedings in which the amount in controversy does not exceed $10,000. Id. § 202.
2. Procedure for Instituting a Claim

To file an action, the claimant must go to one of the six small claims clerks' offices and inform the clerk of the nature of the claim as well as the name and address of the defendant. This information is reduced by the clerk to a simple, concise statement, which serves as the notice of claim and constitutes the pleading. The claimant pays a filing fee of $2 and the cost of mailing a copy of the notice to the defendant. In lieu of a summons, the clerk forwards notice of the claim to the defendant by registered mail, return receipt requested. The notice includes a hearing date on which the defendant or his attorney must appear to avoid suffering judgment by default. The clerk also notifies the claimant of the hearing date. These simple steps constitute the notice and pleading requirements of small claims practice in New York City and contrast sharply with the normal procedural requirements of a summons, a complaint, and an answer.

3. Rights Relinquished by a Claimant

By bringing his claim in the small claims part, the claimant is deemed to have waived his right to a jury trial. All other parties retain the right to demand trial by jury, but must pay a fee of $25, submit an undertaking of $50, and satisfy certain other require-
ments. If a claim is tried by a judge of the civil court, the decision may be appealed only on the ground that "substantial justice has not been done between the parties according to the rules and principles of substantive law." Should the parties consent to trial before an arbitrator, review by a higher court is not available. It is apparent that the tenor of these provisions is to discourage the expense and delay of jury trials and appeals and permit a prompt and final decision of the claim.

4. Limitations on Who May Be a Claimant and on Representation

Claims may not be brought in the New York City small claims part by nonmunicipal corporations, partnerships, unincorporated associations, assignees, or insurers. A corporation may be sued in that court, however, and may appear by a shareholder or, if it is a closed corporation, by either a shareholder or an officer. These limitations evidence a legislative decision to bar corporate claimants from utilizing the inexpensive and simplified small claims procedures to reach individual and presumably legally disadvantaged debtors. In addition, the statutory provisions abrogate, for the small claims part, the normal rule that corporations may appear only by

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65 Id. The defendant is notified of these costs at the same time that he receives notice of the pending action. See N.Y. Crry Civ. Ct. R. § 2900.33(c) (McKinney 1977).
68 The litigants are advised in open court of their right to have their dispute tried by a judge, in which case they preserve their right of appeal, or an arbitrator, in which case the right of appeal is waived. MANUAL, supra note 52, at 7. A claim may not be settled by arbitration without the written consent of both parties. N.Y. Crry Civ. Ct. R. § 2900.33(o)(2); accord, STAFF STUDY, supra note 44, at 684. Even where the parties agree to arbitration, however, they retain the right to appeal to the presiding administrative judge on the grounds that the arbitrator's award was biased or exceeded the scope of his authority. Id. at 689. Annually, approximately 25,000 out of a total of 30,000 claims are arbitrated. See MANUAL, supra note 52, at 9.
69 The litigants are encouraged to have their case arbitrated. See STAFF STUDY, supra note 44, at 684.
70 Section 1809(1) of the New York City Civil Court Act provides: No corporation, except a municipal corporation, public benefit corporation or school district wholly or partially within the municipal corporate limit, no partnership or association and no assignee of any small claim shall institute an action or proceeding under this article, nor shall this article apply to any claim or cause of action brought by an insurer in its own name or in the name of its insured whether before or after payment to the insured on the policy. N.Y. Crry Civ. Ct. Acr § 1809(1) (McKinney Supp. 1977-1978).
71 Id. § 1809(2).
The obvious purpose behind these enactments is to foster some degree of parity between litigants presenting their claims and defenses in the small claims tribunal.

5. Judgment

A judgment obtained in a small claims action is res judicata only as to the amount of money involved in the suit and is not binding on the question of the defendant's liability. With court approval, judgments may be satisfied on an installment rather than a lump sum basis. A 1975 amendment to the New York City Civil Court Act mandates that wholly or partially unsatisfied judgments be indexed alphabetically and chronologically under the name of the defendant. This provision is a companion to the new small claims enforcement procedure which permits a judgment creditor in certain instances to commence an action for triple the amount of his unsatisfied judgment, together with counsel fees and costs, against a judgment debtor who has three unsatisfied judgments against it.

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72 The New York Legislature in 1976 amended N.Y. Civ. Prac. Law § 321(a) (McKinney 1972) to read:

A party . . . may prosecute or defend a civil action in person or by an attorney, except that a corporation or voluntary association shall appear by attorney, except as otherwise provided in section 1809 of the New York City Civil Court Act . . . .


[a] corporation may appear in the defense of any small claim action brought pursuant to this article by a natural person who is a shareholder who owns not less than one-third of the issued shares of voting stock of such corporation or, in the case of a corporation having no more than ten holders of issued shares of voting stocks, all of whom are natural persons, an officer of such corporation.

Id. It should be noted that the defined corporations may only defend actions without an attorney; the statute does not allow suit to be brought by a corporation in the small claims part either with or without counsel. Id.


76 Section 1812 of the New York City Civil Court Act prescribes:

(a) The special procedures set forth in subdivision (b) hereof shall be available only where:

1. there is a recorded judgment of a small claims court; and
2. (i) the aforesaid judgment resulted from a transaction in the course of the trade or business of the judgment debtor, or arose out of a repeated course of dealing or conduct of the judgment debtor, and (ii) there are at least three unsatisfied recorded judgments of a small claims court based on such transaction or repeated course of dealing or conduct, against that judgment debtor; and
Both of these recent amendments are in response to the serious difficulties experienced in recovering small claims awards.

The Small Claims Part in Practice

The small claims part receives approximately 70,000 claims each year. Roughly 40% of these cases relate to consumer complaints, 40% to tort actions, and the remaining 20 percent to landlord-tenant controversies. The six small claims branches of the civil court are convened in the evening from one to four nights each week of the year. A judge of the civil court presides over the small claims division, and a number of arbitrators are present at each session. Litigants are advised of their right to have the claim tried either before the judge or an arbitrator. If the defendant demands a jury trial, or if both sides are represented by counsel, the case must be transferred to the regular day court.

Should the parties elect arbitration, they must signify their consent in writing and the arbitrator has the responsibility to explain to them that his decision may not be appealed. Nearly 90% of the small claims in New York City are heard by arbitrators, a pool of 800 attorneys with at least 10 years experience, who serve without compensation. The hearing conducted by the arbitrator

3. the judgment debtor failed to satisfy such judgment within a period of thirty days after receipt of notice of such judgment. Such notice shall be given in the same manner as provided for the service of a summons or by certified mail, return receipt requested, and shall contain a statement that such judgment exists, that at least three other unsatisfied recorded judgments exist, and that failure to pay such judgment may be the basis for an action, for treble the amount of such unsatisfied judgment, pursuant to this section.

(b) . . . Where each of the elements of subdivision (a) of this section are present the judgment creditor shall be entitled to commence an action against such judgment debtor for treble the amount of such unsatisfied judgment, together with reasonable counsel fees, and the costs and disbursements of such action . . . .


77 MANUAL, supra note 52, at 6.
78 See STAFF STUDY, supra note 44, at 679.
79 MANUAL, supra note 52, at 7.
80 STAFF STUDY, supra note 44, at 680-81, 687.
81 See notes 67 & 68, supra.
84 Id. § 2900.33(o)(2).
85 MANUAL, supra note 52, at 9; Thompson, Directives for Arbitrators 1 (March 25, 1976) (unpublished material of Small Claims Div., N.Y. City Civ. Ct.) [hereinafter cited as Directives for Arbitrators].
86 MANUAL, supra note 52, at 7.
87 Id. at 9; STAFF STUDY, supra note 44, at 687. Although there exists no formal requirement regarding the number of years an attorney must have practiced before he can be
is informal and private, and is preceded by an attempt to settle the case. In the event that this effort is unsuccessful, the arbitrator then will try the case. Each witness must be sworn. The formal rules of evidence are not controlling. Hearsay is admissible, but there must be a residuum of legal evidence to establish the claim. There is no stenographic record of the hearing.

The judge or arbitrator in small claims litigation in New York City may be called upon to play an active role as factfinder for two reasons: pretrial discovery is not available to the parties, and both claimant and defendant appear pro se in almost all cases. The presiding officer, therefore, may question the litigants to elicit relevant information. The parties are alerted in the notice sent them by the clerk to appear at the hearing with their witnesses and proof, but the judge or arbitrator has the responsibility of ensuring that the necessary facts are revealed. Normally, the parties are notified within three days of the arbitrator’s decision. If the defendant does appointed an arbitrator, “at present only lawyers with ten years [experience] are appointed in New York City.” Testimony of Rosemary S. Pooler, Chairwoman and Executive Director, New York State Consumer Protection Board, before the Assembly Judiciary Committee Public Hearing on Small Claims Court, at 8 (Jan. 27, 1977) [hereinafter cited as Pooler Testimony].

The arbitrators receive a preliminary briefing from the administrative judge. At this meeting, emphasis is placed on the importance of having the parties settle the case in the first instance. STAFF STUDY, supra note 44, at 688; Directives for Arbitrators, supra note 85, at 2.


The court shall conduct hearings upon small claims in such manner as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence . . . .

All witnesses and parties that appear before the small claims court must be sworn by oath or affirmation. N.Y. City Civ. Ct. R. § 2800.33(g) (McKinney 1977). This is so, even in cases where the claim is arbitrated, notwithstanding the fact that no record is kept of such claims. Id. § 2800.33(o)(3).

Directives for Arbitrators, supra note 85, at 2.


See MANUAL, supra note 52, at 10. N.Y. City Civ. Ct. Act § 1804 (McKinney Supp. 1977-1978) provides that “[d]isclosure shall be unavailable in small claims procedure except upon order of the court on showing of proper circumstances.” Limited pretrial disclosure was permitted upon order of the court in Dorfman v. Bell, 86 Misc. 2d 359, 381 N.Y.S.2d 983 (Dist. Ct. Nassau County 1976), which arose under § 1804 of the Uniform District Court Act, a provision identical to § 1804 of the New York City Civil Court Act.

Judge Edward Thompson has stated that of the 70,000 small claims annually filed in New York City, more than 68,000 involve claimants without an attorney. MANUAL, supra note 52, at 6.

Id. at 10, 16-17.

Directives for Arbitrators, supra note 85, at 2. No decisions are announced at the time
not appear at the hearing, an inquest will be conducted to assess damages.\(^9\) Where an arbitrator is presiding, his findings and recommendations are reported to the court, and if approved by a judge of the civil court, a judgment in the specified amount will be entered against the defendant.\(^9\)

The procedure for instituting and adjudicating money claims of $1000 or less in New York City seems to work efficiently and fairly due to a fortunate combination of factors. The judges and arbitrators utilize the informal procedures effectively and expeditiously. Access to the small claims part is facilitated by the court's six separate locations in the city and its evening hours. Expenses are minimized since the parties may appear without an attorney, present their contentions without the strictures of formal evidentiary rules, and avoid the costs and delays of discovery procedures. Indeed, many claims never go to trial, as voluntary settlement occurs in over one-half of the cases.\(^9\) If a trial is necessary and the plaintiff prevails, the defendant is accommodated by a judgment permitting payment in installments.\(^10\)

Yet, a basic problem exists in enforcing judgments rendered by the courts. This difficulty is not unique to New York City but is most apparent there due to the large volume of claims and the scrutiny to which its small claims procedure has been subjected.

**STATE SYSTEMS SIMILAR TO THE NEW YORK MODEL**

A survey of small claims procedures in several American states which, like New York, encompass large metropolitan areas having a predictably high incidence of small claims reveals basic similarities to New York practice. The state of Michigan, for example, has established a small claims division in each district of its district courts,\(^10\) and empowered the divisions to hear claims for money only where the amount sought does not exceed $300.\(^10\) Initiation of

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\(^9\) In the event that the defendant does not appear, the arbitrator functions as a referee and conducts an inquest. **STAFF STUDY**, *supra* note 44, at 686.

\(^10\) See *Mich. Comp. Laws Ann.* § 600.8401 (Supp. 1977-1978). The district court has exclusive jurisdiction in civil actions where the amount in controversy does not exceed $10,000. *Id.* § 600.8301. Unlike the Civil Court of the City of New York, however, the Michigan court also has jurisdiction over minor criminal offenses. *See id.* § 600.8311.
claims and service of notice upon the defendant are basically similar to practice in New York. The Michigan statute provides that no claim may be brought by an assignee or third party beneficiary and specifically prohibits attorneys and collection agencies from appearing. The division sits at least once every 30 days. Hearings are before a district court judge and conducted "in an informal manner so as to do substantial justice between the parties according to the rules of substantive law." Both claimant and defendant are deemed to have waived the right of appeal.

Small claims practice in California also merits specific comment, since the statute of that state has recently been amended. By virtue of the amendment, the jurisdictional limit of the small claims division of each justice and municipal court was raised from $500 to $750. In addition to actions seeking only money damages, the division may hear claims for delinquent unsecured personal property taxes and suits involving unlawful detainer after a default in the payment of rent for residential property.

Filing and service provisions generally conform to New York practice. The defendant need not reside in the county where the

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103 In Michigan, the action is commenced by filing an affidavit with the clerk of the court, id. § 600.8402, who causes a copy of the affidavit to be served upon the defendant and directs him to appear at the small claims division. Id. § 600.8404. Service must be effectuated by certified mail or by personal service upon the defendant. Id. § 600.8405. The minimal statutory fees are five dollars for filing the claim and two dollars for servicing notice upon the defendant. Id. § 600.8420(1).
104 Id. § 600.8407.
105 Section 600.8408 of Michigan's Compiled Laws Annotated provides: "No attorney at law, except on his own behalf, [nor] collection agency . . . shall take any part in the filing, prosecution or defense of litigation in the small claims division. Corporations may appear by a full-time employee who is not an attorney at law. MICH. COMP. LAWS ANN. § 600.8408 (Supp. 1977-1978).
106 Id. § 600.8416.
107 Id. § 600.8401.
108 Id. § 600.8411. Although its procedure is informal, the small claims court must adhere to evidentiary rules relating to privileged communications. Id.
109 Id. § 600.8412. In addition, the litigants are deemed to have waived their rights to counsel and trial by jury. Id.
111 Id. § 116.2.
112 Id.

113 See notes 57-61 and accompanying text supra. A plaintiff in California initiates a small claims action by filing, in person or by mail, a claim with the clerk of the small claims division. The claim must set forth the name and address of the defendant, and the amount and basis of the claim. An order then issues directing the defendant to appear at a specified place and time for the hearing. The order and a copy of the claim are served upon the defendant personally or by registered mail. Service is deemed complete on the date the defendant signs the return receipt or on the date of personal service. CAL. CIV. PROC. CODE § 116.4 (West Supp. 1977).
SMALL CLAIMS PRACTICE

claim is filed.114 The claimant may not be represented by an attorney. In fact, no person other than the plaintiff and the defendant may participate in small claims litigation.115 As in Michigan and other states, no claim may be brought by an assignee.116 Although the claimant may not appeal, the defendant is entitled to one appeal117 in which the action is tried de novo.118 As in the case of New York, the statute specifies that the small claims hearings be informal, "the object being to dispense justice promptly between the parties . . . . The judge shall give judgment and make such orders as to time of payment or otherwise as he deems to be just and equitable for the disposition of the controversy."119

Several features of the California statute, however, appear novel. The statutory scheme grants authority to hold small claims court sessions at any hour of any day except a holiday,120 and permits the court to convene at any public building within the judicial district.121 To assist the claimant in filing his claim, the divisions are encouraged to formulate and distribute manuals explaining court procedure, including methods of collecting a judgment.122 The court is prohibited from hearing more than six claims by the same plaintiff in a single day.123 Moreover, each small claims court must make a reasonable effort to provide the parties with a list of interpreters who are available at a minimal or no fee.124 Clearly, these recently enacted provisions go beyond the normal procedures included in

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115 Section 117.4 of the California Civil Procedure Code provides:
No attorney at law or other person than the plaintiff or defendant shall take any part . . . . in the filing or the prosecution or defense of such litigation in small claims court, unless the attorney is appearing to prosecute or defend an action by or against himself, or by or against a partnership in which he is a general partner and in which all the partners are attorneys, or by or against a professional corporation of which he is an officer or director . . . . Nothing herein shall prevent an attorney from rendering advice to a party in such litigation . . . .

Id. § 117.4.

116 Id. § 117.5.
117 Id. § 117.8(a). The appeal must be brought by the defendant in a superior court in the county where the small claims action was instituted. If the defendant seeks affirmative relief in the small claims court, however, he loses his right to appeal the decision on the original claim. Id.

118 Id. § 117.10.
119 Id. § 117. As in New York, the court may permit the judgment debt to be discharged in installment payments. See note 74 and accompanying text supra.

120 CAL. CIV. PROC. CODE § 116.7 (West Supp. 1977).
121 Id.
122 Id. § 116.
123 Id. § 117.6.
124 Id. § 118.7.
small claims practice and are innovations which other jurisdictions might well emulate.

**CRITICISMS AND RECOMMENDATIONS**

Small claims practice, when it is operating according to its basic goals—to do substantial justice with a minimum of legal technicality, delay, and expense—benefits the judicial system as well as the individual litigants. When small claims procedure fails to function optimally, the deficiencies usually may be traced to one or more factors such as overutilization by corporate plaintiffs, inequality of representation, inability of the inexperienced plaintiff to initiate his claim in the appropriate form, inconvenient or infrequent court sessions, and the difficulties attending collection of judgments.

Studies reviewing the operation of small claims courts in the 1950's voiced concern that the purpose of the system was being perverted by overutilization of the courts by collection agencies, credit stores, and corporate claimants employing skilled counsel or experienced agents. More recent analyses of urban and suburban courts suggest that business claimants are not necessarily large corporations but rather small retailers, local tradesmen, sole proprietors, servicemen, and repairmen. A few states have addressed the

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122 See N.Y. CIV. CT. ACT § 1804 (McKinney Supp. 1977-1978). The New York City Civil Court Act provides that a party may appeal a decision of a small claims court solely on the ground that substantial justice was not done between the parties. Id. § 1807 (McKinney 1963). In Blair v. Five Points Shopping Plaza, Inc., 51 App. Div. 2d 167, 379 N.Y.S.2d 532 (3d Dep't 1976), the Appellate Division, Third Department, considered the extent of an appellate court's power to review the decision of a small claims court challenged on the ground that it did not accomplish substantial justice between the parties. The third department concluded that a reviewing court will not substitute its judgment for that of the trial court where it is found that the trial court applied the appropriate principle of law to the issues involved. Therefore, the court held that alleged errors in the presentation of evidence or pleadings are not reviewable by an appellate court. Id. at 169, 379 N.Y.S.2d at 534. In support of its decision, the Blair court reiterated that a small claims court "must be given wide latitude and discretion in the conduct of . . . [its] proceedings." Id. at 168-69, 379 N.Y.S.2d at 534 (quoting Buonomo v. Stalker, 40 App. Div. 2d 733, 336 N.Y.S.2d 687 (3d Dep't 1972)).

124 See STAFF STUDY, supra note 44, at 7-12, wherein the results of research conducted in California, Massachusetts, Washington, D.C., and other areas are said to have confirmed the "collection agency" aspect of the small claims courts. For a summary of the small claims studies, see Yngvesson & Hennessey, supra note 6, at 235-43. See also Fox, Small Claims Revision—A Break for the Layman, 20 DE PAUL L. REV. 912 (1971); Murphy, D.C. Small Claims Court—The Forgotten Court, 34 D.C.B.J., Feb. 1967, at 14.

127 See Note, The Ohio Small Claims Court: An Empirical Study, 42 CIN. L. REV. 469, 513 (1973); Small Claims Court: Reform Revisited, 5 COLUM. J.L. & SOC. PROB., Aug. 1969, at 47, 61. A recent report stated that two-thirds of the claims in the Los Angeles small claims
problem by prohibiting business organizations and assignees from suing in a small claims tribunal\textsuperscript{128} or by restricting the number of claims one party may bring during a specified period of time.\textsuperscript{129} But the majority of American jurisdictions apparently do not apprehend the large number of business claimants to be a serious defect of the system. Some commentators have urged that nonindividual plaintiffs, both incorporated and unincorporated, should have access to the small claims court as a matter of fairness and efficiency,\textsuperscript{130} and that the defendant may be less disadvantaged in this forum than in a regular civil court. On balance, it would appear equitable to bar large business organizations, and particularly collection agencies, but to permit sole proprietors and local tradesmen to utilize the small claims court.\textsuperscript{131}

Although a majority of jurisdictions permit the parties to be represented by attorneys,\textsuperscript{132} the employment of counsel is not encouraged. It is more difficult to maintain the informality of the proceedings when a lawyer is present to raise technical objections.\textsuperscript{133} If only one party is represented by counsel, that party would seem


\textsuperscript{129} See CAL. CIV. PROC. CODE § 117.6 (West Supp. 1977).

\textsuperscript{130} A study conducted by the Staff of the National Institute for Consumer Justice, STAFF STUDY, supra note 44, discussed several problems which might arise when a jurisdiction bars corporations from its small claims courts. One such problem is that finance agencies and creditors might be encouraged to engage in "heavy-handed tactics" in making their collections, and businesses may tend to restrict the granting of credit. Moreover, by relegating to the regular civil court those corporations which may abuse small claims procedures, a jurisdiction would be subjecting consumer defendants to higher court costs and more complex procedure. Id. at 50-51.

\textsuperscript{131} It has been suggested that access to small claims court should be limited to those parties who make proper use of it. In its study the staff of the National Institute for Consumer Justice recommended that "[a] presiding judge of a small claims court should be able to bar any litigant from using the small claims court . . . if the judge determines the litigant has abused or misused the court . . . ." Id. at 57. Misuse would include such practices as obtaining default judgments by fraudulent means, circumventing court rules by filing under a fictitious name, and harassing the defendant. Id. at 56.

\textsuperscript{132} See note 36 and accompanying text supra.

to have a clear advantage over his opponent. Reformists have urged, however, that paraprofessionals be made available to assist the inexperienced claimant or defendant and that interpreters be provided when there is a language difficulty, in the belief that instructions from the court clerk do not adequately prepare a party for the trial itself.

Maximal utility of small claims courts cannot be achieved unless the public has knowledge of the courts' function and sessions are conducted at times and places convenient to the consumer. The statutory provisions and practices of California and New York provide affirmative guidance in this area. Both states recognize the need to publish and distribute information concerning the function and availability of small claims procedures. New York City operates six branches of the small claims division in evening sessions for the convenience of litigants. The new statute in California goes even further in authorizing small claims courts to be convened in appropriate public buildings. Conducting small claims courts in local neighborhoods is a proposal that has been advanced for large metropolitan locations, the rationale being that the lay plaintiff or defendant should not be forced to travel inconvenient distances. Evening and Saturday court sessions reduce or eliminate the economic hard-

134 The National Institute for Consumer Justice observed:

"There are many reasons why lawyers should be kept out of the small claims court. The typical individual plaintiff will not have a lawyer; he comes to small claims court because his claim is not large enough to warrant hiring one. If the other side appears with a lawyer, the individual litigant will be at a considerable disadvantage. The presence of a lawyer in a proceeding may affect it in a variety of obvious and subtle ways. It may cause the judge to take a less active role in the trying of the case. The judge may be more hesitant to cross-examine and slower to draw out the plaintiff. The lawyer will inevitably complicate the procedure by the use of evidentiary objections, by making motions, and perhaps in other ways. By these and other means he may effectively intimidate the individual plaintiff; he will surely put that plaintiff at a disadvantage."

NATIONAL INSTITUTE FOR CONSUMER JUSTICE, REDRESS OF CONSUMER GRIEVANCES 23 (1972). Nonetheless, it has been suggested that allowing lawyers in small claims court serves "as a check on either an incompetent or biased judge." STAFF STUDY, supra note 44, at 202.

135 See STAFF STUDY, supra note 44, at 243, wherein it is stated:

"Clear, written instructions and a helpful clerk can solve most litigant's problems, but there will be some litigants who have difficulty understanding written instructions, others who have more than routine problems and complexity in their cases and still others who just need assurance and general instructions on how to prepare their cases. The lay advocate should be able to help these people."

In addition, the lay advocates should tell litigants what to expect in court. The lay advocates should also tell the litigant what information is important to tell the judge and what information is basically irrelevant.

136 See note 79 and accompanying text supra.

ship on employees or tradesmen who would otherwise be required to absent themselves from their employment to appear in court. Although these practices are recommended primarily for urban areas, the importance of disseminating information concerning small claims and increasing the accessibility of the courts applies to all areas of the country.

While claimants may find the small claims court easily accessible, informal, fair and prompt, the judgments they obtain can be expected to produce no monetary satisfaction in about one-half of the cases. At the two poles—the very inception of the claim and the enforcement of the judgment—the small claimant is bound by certain formalities of law which he often cannot cope with successfully unless he has the aid of an attorney or other special assistance. Operating without the special knowledge of the professional, the *pro se* claimant may fall into errors of commission or omission which frustrate his recovery.

The first of these pitfalls is illustrated by the many instances in which the claimant sues the defendant in the wrong name. In the case of a corporation, for example, if the exact name of incorporation is not specified in the notice of claim, the resulting judgment may be invalid. Several legislative approaches may be invoked to correct this problem. Claimants might be authorized to sue defendants in their trade names. Alternatively, the legislature might require that the legal name of a business be prominently displayed on signs in the establishment and printed on all receipts and invoices. Assistance in alerting the claimant to this technicality could be provided by paraprofessionals attached to the court. Such personnel might be recruited on a volunteer basis.

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138 See Staff Study, supra note 44, at 62-69, which discusses the inconveniences resulting from the limited accessibility of small claims courts. Saturday sessions and night sessions may not be feasible for several reasons, however, including the additional costs that would be incurred and the difficulty in procuring court personnel and judges to serve during these sessions.

139 See CSS Report, supra note 47, at 16; note 43 and accompanying text supra. Where the parties voluntarily settle their dispute, the claimant collects in about 80% of the cases. CSS Report, supra note 47, at 17. See also Hochberger, Public Urged to Use Courts for Small Claims, N.Y.L.J., May 27, 1977, at 1, col. 4, at 26, col. 1, for a summary of the Preliminary Report of the Small Claims Project, National Center for State Courts, indicating that in the courts studied, 70% to 75% of judgments were collected.

140 Pooler Testimony, supra note 87, at 5.

141 CSS Report, supra note 47, at 11; Testimony of Robert J. Egan, First Deputy Commissioner of New York City Department of Consumer Affairs, before the Assembly Judiciary Committee Public Hearing on Small Claims Court, at 7-8 (Jan. 27, 1977) [hereinafter cited as Egan Testimony]; Pooler Testimony, supra note 87, at 5.
Assuming the plaintiff surmounts these initial difficulties in instituting his claim, he still faces major obstacles in realizing the benefit from a favorable decision of the court. Various proposals have been suggested to increase the judgment creditor’s chances of collecting his judgment. As a first step, it is urged that the small claims court keep an index of debtors who have not satisfied their judgments. Where these debts arise out of transactions with a licensed business, the licensing agency should receive notice of the default and refuse to relicense the offending business, or take other appropriate administrative action. Additionally, a penalty might be imposed on commercial establishments which have failed to satisfy a judgment within a prescribed period of time. This penalty, together with the awarded recovery and attorney’s fees, would be payable to the judgment creditor.

Another approach is to create an unsatisfied judgment fund operated by a local corporation to which all retail establishments contribute a specified amount. Judgments remaining unsatisfied after 60 days would be paid out of the fund and the corporation would have recourse against the business which failed to pay. An improvement in the collection process might be achieved by substituting salaried officials for fee-compensated enforcement personnel. Politically appointed marshals whose compensation depends on a percentage of the judgment collected may tend to be lax in pursuing judgment debtors in small claims cases. Therefore, it would be in

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142 Commentators writing on small claims procedure in several major cities indicate that a considerable percentage of successful plaintiffs are unable to collect their judgments. This serious problem appears to stem from the absence of collection aids or procedural assistance to plaintiffs in small claims practice. See Staff Study, supra note 44, at 182-93.


144 See Staff Study, supra note 44, at 187. As was noted earlier, New York requires that an index be kept of defendants who have failed to pay their small claims court judgments. See note 75 and accompanying text supra.

145 Egan Testimony, supra note 141, at 6-7.

146 CSS Report, supra note 47, at 29-30. It has been suggested that defendants who frequently cause collection difficulties should be required by the court to post a bond before being permitted to defend a small claims action. See Staff Study, supra note 44, at 188. Such a procedure would appear, however, to raise serious constitutional questions.

147 See Pooler Testimony, supra note 87, at 13. In New York City, when execution is ordered by the small claims court, it may be directed either to a marshal or a sheriff who
the claimant's interest to entrust enforcement to officials whose income does not depend upon the size of the judgment.

Finally, a simplified procedure whereby the judgment creditor can discover the defendant's assets is plainly necessary. In formal practice, enforcement of judgments is aided by such devices as restraining notices forbidding the defendant from transferring his assets, and information subpoenas requiring the defendant to declare his assets. An attorney for a creditor may make use of these devices on behalf of his client, but the pro se claimant cannot. Similar procedures should be available in the small claims court, perhaps in modified form, so that the claimant has prescribed means for identification of the defendant's assets which the enforcement officer may levy upon to satisfy the judgment.

**CONCLUSION**

Few would quarrel with Roscoe Pound's aphorism: "Dissatisfaction with the administration of justice is as old as law." But dissatisfaction with some aspects of small claims practice has spelled not defeat but perseverance in addressing shortcomings seriatim as they have become more pronounced and obstructive. Growing communities may look to the laboratories of the large cities

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148 Statewide practice rules in New York provide that "the judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgment . . . ." N.Y. Civ. Prac. Law § 5223 (McKinney 1963). To this end, the attorney for the judgment creditor may issue restraining notices and subpoenas to compel the debtor or his garnishee to appear for a deposition or to supply documents and information concerning the debtor's assets. Id. §§ 5222, 5224 (McKinney 1963 & Supp. 1976-1977).

149 See N.Y.L.J., June 23, 1977, at 1, col. 2, discussing a special project to aid in the collection of judgments obtained in small claims parts in New York City. The project will be staffed by paid and volunteer attorneys, as well as law students, who will assist in the collection of unsatisfied small claims court judgments. Id. at 2, col. 4.


151 Efforts to eradicate or minimize flaws in the system are ongoing in New York. The Assembly Committee on the Judiciary has approved several bills for submission to the Assembly. The proposed legislation would require small claims courts to conduct at least one evening session a month, permit sheriffs to execute on property owned by a corporation in any name under which it does business, limit defendants' counterclaims to the monetary
in meeting the problems posed by inaccessibility of the courts, the lack of legal sophistication on the part of litigants, insufficient judicial manpower, and ineffective enforcement procedures.

The small claims system, which emerged from the reform movement of the early twentieth century, now rides the crest of the consumerism of the last decade. Just, prompt, and inexpensive redress of small economic grievances is an objective in total harmony with the campaign to give the consumer a fair deal in the marketplace. In substantial measure, small claims courts function as consumer courts. The system must continue to adjust, pragmatically, to the need for expeditious and comparatively informal resolution of minor claims.

jurisdiction of small claims courts, and permit a party in a small claims action to be assisted by a friend or a paraprofessional. N.Y.L.J., Feb. 2, 1978, at 1, col. 3.