

The Practice in the Small Claims Court of the City of New York

Carl E. Alper

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Alper, Carl E. (1934) "The Practice in the Small Claims Court of the City of New York," *St. John's Law Review*: Vol. 9 : No. 1 , Article 40.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol9/iss1/40>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

CURRENT LEGISLATION

Faculty Advisor—PROFESSOR WILLIAM TAPLEY

Editor—CARL E. ALPER

THE PRACTICE IN THE SMALL CLAIMS COURT OF THE CITY OF NEW YORK.—At the last session of the legislature, in his message on the Administration of Justice, Governor Herbert H. Lehman called that body's attention to a condition that has long vexed the citizenry and judiciary alike, the plight of the poor litigant.¹ The impecunious claimant whose demand, though small, was just and vital, hesitated to thrust himself into the technical, intricate and far too costly labyrinth which the City Court proved to be. Consequently, as a practical matter, justice was denied him and the distrust and disrespect engendered have brought our city's courts into disrepute.² A simple machinery had to be set up which could grind the tremendous grist³ cheaply and with dispatch.⁴ To this end the Small Claims Courts⁵ were established.

The purpose of the act⁶ is frankly experimental.⁷ The legislature has provided merely a prospectus and has invested the board of justices⁸ with the duty of prescribing a simple, inexpensive procedure, not necessarily consistent with that followed in other courts.⁹ In this way it was hoped the device would be directed by those most familiar with its course and would be more readily responsive to the readjustments that future exigencies might demand.¹⁰ Accordingly, the presiding justice has designated a court room in each borough for the hearing of such trials, and on September 17, 1934, the first small claims were heard.¹¹

¹ Message of the Governor, reprinted in the N. Y. STATE BAR ASS'N BULL., April, 1934, at 185, 186.

² *Supra* note 1, at 189.

³ "Annual report of the Municipal Court of the City of New York for 1932 shows 530,686 actions were commenced and judgments were rendered in excess of \$54,000,000." Justice George L. Genung, N. Y. STATE BAR ASS'N BULL.

"Nearly 50% of the business in the Municipal Courts consists of cases where the recovery is under \$100." *Infra* note 7, at 182.

⁴ Title of Laws of 1934, c. 598.

⁵ *Ibid.* In effect Sept. 1, 1934.

⁶ N. Y. CITY MUN. COURT CODE, title XI, 1934.

⁷ Report of "Committee on Courts of Ltd. Jurisdiction" of N. Y. City Bar Ass'n (1934).

⁸ *Supra* note 6, title I, §7.

⁹ *Supra* note 6, §130.

¹⁰ *Ibid.*

¹¹ Two sessions are held each week in each borough, both on Monday at 2 and at 7 P. M. at the following places:

Manhattan, Central Grand Jury Court, 30 W. 35th St.

Brooklyn, Central Jury Court, 120 Schermerhorn St.

The facilities of the Small Claims Court are available to anyone (other than a corporation, partnership, association or assignee)¹² whose claim does not exceed fifty dollars, exclusive of interest and costs.¹³ The petitioner, or someone in his behalf (not necessarily an attorney), appears before a clerk,¹⁴ pays a filing fee of one dollar and twenty-five cents, and in his own words,¹⁵ states his case. The clerk, by inquiry elicits any further information required and docketts in "a concise, untechnical form," the general nature of the action and the data relevant thereto.¹⁶ He then sets an early date for the hearing,¹⁷ gives a memorandum to that effect to the plaintiff or his representative¹⁸ (who, of course, is present), and on that same day sends by registered mail¹⁹ to any address of the defendant, a "summons" to appear.²⁰ This citation serves the defendant not only as a summons and complaint, but also as a bill of particulars²¹ and a monition, as well, of any rights and liabilities which may accrue to him.²²

Bronx, 2d Dist. Court, 161st St. and Washington Ave.
 Queens, 4th Dist. Court, Jamaica Town Hall, Jamaica.
 Richmond, 2d Dist. Court, 71 Targee St., Stapleton.

¹² *Supra* note 6, §187. A corporation, partnership, or association is excluded perhaps because it is presumed to be financially able to avail itself of the "expensive" litigation that the regular term of the Municipal Court affords.

¹³ *Id.* §179 includes any claim reviewable in the Municipal Court except supplementary proceedings.

¹⁴ "The word 'clerk' in these rules shall include a deputy or assistant clerk." Rules for N. Y. City Small Claims Proceedings, Rule XVII. See also *supra* note 6, §181.

¹⁵ " * * * and except by special order of the court without the service of any pleading * * *," *supra* note 6, §181.

¹⁶ *Supra* note 6, §181; also *supra* note 14, Rule I. The clerk likewise docketts the address of plaintiff and any address of defendant where summons by mail would be likely to reach him. Rule II.

¹⁷ *Supra* note 6, §181. The board of justices has provided that the time set for the hearing "shall not be less than five nor more than eleven days from the commencement of the action," Rule III. This is a reduction in time from about two years (the practice in the city courts today). *Supra* note 1.

¹⁸ "Notice to an attorney for a party or to one authorized to appear in his behalf, shall be equivalent to notice to such party." *Supra* note 14, Rule XVIII.

¹⁹ The title speaks of "notice by mail" but the board of justices has stipulated that notice be sent only "by registered mail, return receipt requested," to ascertain "the date of delivery shown by the return receipt and the name of the addressee or agent signing the receipt." *Id.* Rules IV, V.

²⁰ *Id.* Rule V. "Notice shall be valid although refused by the defendant and therefore not delivered. * * * If the notice is returned undelivered, without refusal by the defendant or if in any other way it appears that notice has not reached the defendant, the clerk shall issue, at the expense of the plaintiff, such other or further notice as the court may order, and note the same on the docket.

²¹ The clerk's statement and other relevant data, *supra* note 16.

²² Defendant is advised to bring whatever documents he may have to substantiate his defense, he is informed that the clerk will subpoena witnesses for him without cost and is admonished that unless he or someone in his behalf appears, judgment will be rendered against him. *Supra* note 14, Rule IV. The

The hearing itself is almost informal in its simplicity. In furtherance of the legislature's intent to provide for the prompt and inexpensive²³ adjudication of small claims, these courts dispense with rules of practice, procedure, pleading and evidence²⁴ and make their awards solely on the basis of substantive law.²⁵ Witnesses are sworn²⁶ but stenographic minutes are taken only when demanded.²⁷ One innovation worked by the board of justices is the expedient whereby the court begins the hearing by calling first upon the defendant (rather than upon the plaintiff) to present his defense, counterclaim or set-off²⁸ for since, by the summons, the court and the defendant are already acquainted with the nature of the plaintiff's case no recapitulation at the hearing is necessary. The defendant, as was stated, may set up a counterclaim and unless plaintiff requests an adjournment (which *must* be granted for not more than 10 days)²⁹ both issues are tried forthwith, otherwise they will be tried at the adjourned date.³⁰

Judgments are entered by default and upon the hearing. If plaintiff fails to appear the case may be dismissed or otherwise disposed of within the discretion of the court.³¹ The judgment may order the money paid either outright to the prevailing party, at a specified time, by installments, or into court,³² or the court may stay its execution subject to modification or annulment.³³

Decisions under this title are *res adjudicata*, however, only as to the amount involved and not as to the facts presented either collaterally or at issue.³⁴ If the action is one which may subject the defendant to civil arrest he must so be notified by the summons, and if judgment is entered against him by default, he is to be again notified by registered mail of the fact of the judgment and the liability to civil arrest. But "no body execution is to issue until three days after the mailing of such notice."³⁵

new form of summons also delineates what must be done if the defendant desires a jury trial. Notice to defendant, Form C, Rule X.

²³ *Supra* note 4.

²⁴ *Supra* note 6, §182, " * * * except statutory rules relating to privileged communications and except the provisions of §347 of the N. Y. C. P. A. * * * " Also *supra* note 14, Rule VIII.

²⁵ *Ibid.*

²⁶ *Supra* note 14, Rule VIII.

²⁷ *Supra* note 6, §180.

²⁸ *Supra* note 14, Rule VIII.

²⁹ Since the plaintiff's cause of action and relevant data are stated on the summons.

³⁰ *Supra* note 14, Rule VII.

³¹ *Id.* Rule VIII.

³² *Id.* Rule XIII.

³³ *Id.* Rule XV. " * * * for want of actual notice to a party, for error, or for any other cause, the court may deem sufficient, and may stay for a day certain the execution, and the court may set the case for trial."

³⁴ *Supra* note 6, §186.

³⁵ *Supra* note 14, Rules IX and XIV.

It is to be here noted that the jurisdiction of the Small Claims Court is not at all mandatory, but is merely a supersedure to the established practice in the municipal court. If the claimant elects to avail himself of the benefits which the Small Claims Court has to offer, he of necessity makes certain concessions. By proceeding under this title the plaintiff waives a jury trial³⁶ and all rights to appeal except on issues of substantive law.³⁷ The defendant,³⁸ nevertheless, is not precluded from demanding a jury trial. In fact, the summons informs him that if, in good faith, he feels that certain issues of fact may merit it, he may secure such a trial by paying a jury fee of \$6.00 and by filing an undertaking³⁹ or posting cash to the amount of fifty dollars. This, he is informed, is to secure to the plaintiff any costs which may be awarded him.⁴⁰

The court may in its discretion remand any small claim to another part of the municipal term and proceed to try it there according to the prevailing rules of practice and procedure.⁴¹ In that event the plaintiff will be deemed to have waived nothing in the Small Claims part.⁴²

This then, is the present situation of the New York City Small Claims Courts. How far these tribunals will alleviate the ills that beset our body judicial cannot now be accurately foretold. Surely the legislature has correctly diagnosed the major ailments and has left a group of physicians who are closely observing the patient's convalescence and who stand by ready to administer further restoratives if found necessary.

CARL E. ALPER.

THE UNIFORM TRUST RECEIPT ACT.—The Uniform Trust Receipt Act¹ was enacted in New York State on May 14, 1934, and went into effect on July 1, 1934. As a result of this, New York became the first state of the Union to adopt this Act. The statute as it has been adopted is in form a duplicate of the eighth tentative draft of the Committee on Uniform Trust Receipts Act of the National Conference of Commissioners of Uniform State Laws and

³⁶ *Supra* note 6, §184.

³⁷ *Id.* §185.

³⁸ Or any interested party other than the plaintiff.

³⁹ *Supra* note 14, Rule XI, "The undertaking to be filed * * * shall be in the form prescribed by Rules 26 and 27 of the N. Y. C. P. A."

⁴⁰ *Supra* note 6, §184. Where defendant demands a jury trial, plaintiff must be notified of that fact. *Supra* note 14, Rule XII.

⁴¹ *Id.* §183.

⁴² *Id.* §184.

¹ N. Y. CONSOLIDATED LAWS OF 1934, c. 574, now §§50-58L of N. Y. PERSONAL PROPERTY LAW.