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Small Claims Courts

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SMALL CLAIMS COURTS

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Florida's small claims courts have proved to be a boon to practicing attorneys of the state, to say nothing of their popularity with plaintiff and defendant laymen. The small claims court springs from a real need for a forum where, without technical procedure, a layman can bring what he conceives to be his torts and breached contracts for adjudication promptly, inexpensively, and without benefit of counsel. Busy lawyers can send their clients to these courts with the confidence that a courteous hearing will be accorded them by a judge who, in nearly all cases, is a member of The Florida Bar. These little courts provide a teething ring for the younger members of the bar. More and more lawyers of all categories are discovering this simple route to speedy justice without the attendant preparation of precise pleadings and motions, hearings, pretrial conferences, time-consuming jury selection, and trials.

The lawyers, skeptical at first, are now recognizing that these courts are an answer to a professional problem as well as one of public relations. Recognition that the statutory notice to appear[1] contains the invitation to "come with or without an attorney" is resulting in more appearances by lawyers, especially with the trend toward increased jurisdictional limits. Accompanying the more frequent appearance of lawyers technically trained in a technical profession, the proceedings have a natural tendency to become technical. This tendency should be carefully avoided. Let it be said emphatically that lawyers are gaining business by virtue of the small claims court. These courts have opened the doors for the filing of ten cases today where only one could be filed economically before. In Palm Beach County, for example, in 1951 fewer than 400 cases were filed in the county court, in which the maximum jurisdictional limit is $500. Since the activation of the small claims court in the county there have been nearly 4,000 cases filed each year. Based on reports from many of the judges, it is estimated that more than 50,000 cases are filed annually in

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[1]FLA. STAT. §42.19 (1953).

the small claims courts of Florida. It is evident that 90% of these cases would never have been filed under the old system. It might be added parenthetically that the very existence of these inexpensive tribunals is conducive to many settlements that otherwise would not be made.

Procedure in the small claims courts is usually informal, resembling a pretrial conference more than an actual trial. Results obtained from the writer's experience with some 15,000 cases spread over four years indicate that approximately 30% of all cases filed are settled prior to hearing, while 20% go by default. The other half are heard, many resulting in the entry of a judgment with execution stayed pending small payments over a period of time. If these payments fail, execution issues. Most cases filed are "plaintiff's cases," but defendants prevail in about one out of fifteen, with a generous sprinkling of voluntary nonsuits. It is safe to say that over 60% of the awards made result in complete satisfaction within a few weeks of their filing. These averages prevail throughout the state, as nearly as can be ascertained.

The types of cases are of infinite variety. Roughly 75% are claims for goods sold or services rendered for which payment has not been made, with the attendant defenses that the goods were not as represented or that the services were unsatisfactory. The other 25% of the cases run the gamut of every conceivable tort, automobile negligence cases leading the list. It is estimated that lawyers participate in at least 20% of the cases filed in the state. This figure is slightly higher in Palm Beach County, and in Dade County 4,000 lawyers participated in the nearly 10,000 cases filed there during 1955.

HISTORICAL BACKGROUND

In 1943 the Legislature passed a population act[2] creating small claims courts in Dade County by providing that justice of the peace courts should act in this capacity, with the J. P. serving as judge. The unique features of the small claims court thereby made their first appearance in Florida, and the language used throughout this act is the pattern for all subsequent legislation. These features were the low filing fee of $2.50, service of process by registered mail, a short return day — not less than five days — at which time a trial could be had, and the authority of the judge to stay the judgment or execution pending installment payments by the defendant according to his

[2]Fla. Laws 1943, c. 21915.

means. In 1947 similar population acts were enacted affecting Volusia[3] and Hillsborough[4] counties. These acts were almost identical with that of Dade County.

In 1949 an important corner was turned. The Legislature created a small claims court in Duval County;[5] it used practically the same language that appeared in the first Dade County act but departed from the pattern in requiring the judge to be a member of the bar and in giving the court county-wide jurisdiction. The jurisdictional limit was fixed at $100. In the same session, again paraphrasing the original act, the Legislature created a civil claims court in Hillsborough County,[6] the most notable feature of which, except for the change of name, was the installation of the senior circuit judge as its judicial officer and the clerk of the county court as its clerk. In this act the jurisdictional limit was established at a minimum of $100 and a maximum of $500.

The next important step was the 1949 decision[7] of the Florida Supreme Court unanimously upholding the constitutionality of the statute creating the Hillsborough County court. The statute was attacked on no less than seven constitutional grounds, including points of due process, formal notice requirements, jurisdictional conflicts, and duties of the public officers affected.

With this stamp of judicial approval, coupled with public acclaim from the scattered counties where the courts then existed, there came the avalanche of 1951 legislation on the subject. At least nineteen laws creating small claims courts in as many counties came into being at this session. To make sure no one was left out, the Legislature adopted what are probably the best features of the preceding legislation in enacting chapter 26902, Laws of Florida, which has become chapter 42, Florida Statutes 1953, the general law of the state pertaining to small claims courts.

In 1953 and 1955 the Legislature created several more small claims courts and amended a few of the existing laws. Notable was the provision in most for a higher jurisdictional limit, as high as $500 in a half-dozen counties. An extra judge was provided for Dade

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[3]Fla. Laws 1947, c. 24018.
[4]Fla. Laws 1947, c. 24150.
[5]Fla. Laws 1949, c. 25489.
[6]Fla. Laws 1949, c. 25574.
[7]State *ex rel.* Murphy-McDonald Builders' Supply Co. v. Parks, 43 So.2d 347 (Fla. 1949).

County,[8] and a system of graduated filing fees was provided for Palm Beach[9] and Indian River[10] counties. Courts to be governed by the general law were authorized for the cities of Hollywood and Pompano.[11] To digest all of the special acts would be more confusing than helpful. Suffice it to say that without exception all follow the general language of chapter 42. Most of the special acts require the judge to be a member of the bar. The chief difference between them is the top jurisdictional limit, ranging from $200 to $500, and the amount of the filing fee, which averages about $5.00. All of these laws, however, preserve the unique features that distinguish these courts from other courts of law. Over forty small claims courts, exclusive of the so-called J. P. small claims courts, have been created, about one third of which now operate under chapter 42.

THE GENERAL LAW

Comments on the provisions of Chapter 42, the general law, may be of value to the practitioner. As previously pointed out, the general language of all the acts is almost identical. There is a dearth of judicial interpretation of the act, but there are many helpful opinions by the Attorney General.[12]

Activation

Section 42.02 permits the county commissioners of the various counties to activate a small claims court on their own motion or on petition of twenty-five registered voters. In approximately two dozen counties no small claims court exists; a worthwhile project for the bar association of those counties would be the activation of a court.

Jurisdiction

Section 42.03 grants the court concurrent jurisdiction in all cases at law in which the damages demanded or the value of property in-

[8]Fla. Laws 1955, c. 29636.

[9]Fla. Laws 1955, c. 30086.

[10]Fla. Laws 1955, c. 30369.

[11]Fla. Laws 1955, c. 30504.

[12]These opinions are compiled in biennial volumes and are cited herein by the page at which the opinion appears in the appropriate volume; the more recent opinions, which are not yet bound, are cited by a hyphenated figure that indicates

volved does not exceed $250.[13] This amount apparently includes interest and attorney's fees but not costs.[14] Territorial jurisdiction is apparently state wide,[15] but the court is, of course, subject to established venue requirements.[16] "All cases at law" does not include petitions for extraordinary writs or other cases that by constitution or statute must be filed in another court.[17]

The Judge

Sections 42.04 and 42.05 deal with the appointment, election, tenure, qualifications, and compensation of the judge. He must be a member of the bar; his remuneration from the small claims court cannot exceed $7,500 a year and must come solely from the fees collected by the court, except in Dade County, where since May, 1955, there have been two judges receiving compensation of $10,000 annually. The judge is appointed by the Governor, but he must run in the succeeding general election and every four years thereafter. The judge has inherent power to punish for contempt, and the sheriff is the executive officer for this purpose.[18] He is not required to make a performance bond[19] and is eligible to participate in the county employees' retirement system.[20] He cannot hold office under this act and at the same time be a justice of the peace.[21]

Clerk and Assistants

The provision in section 42.06 for appointment by the judge of a clerk may not be mandatory, but this appointment is desirable. The judge should not have to receive claims when filed or discuss cases with litigants prior to the trial. This section authorizes the employment of assistants for the clerk if warranted by the volume of cases. The clerk

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the year in which the opinion was issued as well as its number.

[13]$300 in Dade County.

[14]See Seaboard Air Line Ry. v. Maxey, 64 Fla. 487, 60 So. 353 (1912).

[15]Op. Att'y Gen. Fla. 055-336 (Dec. 21, 1955).

[16]Williams v. Aeroland Oil Co., 155 Fla. 114, 20 So.2d 346 (1944), and cases cited therein, is helpful in this respect.

[17]See discussion under "Filing Fees," *infra*.

[18]REP. ATT'Y GEN. FLA. 80 (1951).

[19]REP. ATT'Y GEN. FLA. 82 (1952).

[20]REP. ATT'Y GEN. FLA. 246 (1951).

[21]REP. ATT'Y GEN. FLA. 123 (1953).

and the assistants must be compensated from the income derived from filing fees.

Forum and Calendar

Tucked away in section 42.07 is the meaty statement, "It is the purpose of this act to provide a forum for the speedy trial of small claims cases." The section further provides that the court is in session from day to day, that is, there are no terms, and cases may be set for trial at any time upon due notice. The clerk is directed to keep a trial calendar; placing the case on the trial calendar "with the date of trial shall be notice to all persons." The scope and effect of this phrase is not clear.

Records

"Under Section 42.08 F.S., small claims courts established under Ch. 42, F.S. are required to keep 'minutes of all proceedings' as well as other records, which would seem to make them courts of record."[22] The clerk is directed to keep the records prescribed in this section. Judge J. H. Taylor of Duval County devised forms and an efficient method for keeping indexed records, which were adopted by the judges of several counties. The writer recommends this system for the setting up of a new court.

Absence or Disqualification of Judge

Section 42.09 purports to authorize a justice of the peace to act in the absence or disqualification of the judge. When the J. P. small claims courts in Dade County were given $300 jurisdiction by an amendment to the original act,[23] the Supreme Court held the move to be contrary to the constitutional limitation[24] of these judges to a $100 maximum jurisdiction.[25] This, however, was not a case in which a J. P. was attempting to act as a substitute for a judge of a general law small claims court. In an advisory opinion to Governor Warren the Court said: "This section applies to a judge under that act [chap-

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[22]REP. ATT'Y GEN. FLA. 252 (1952).
[23]Fla. Laws 1951, c. 26667.
[24]FLA. CONST. art. V, §22.
[25]State *ex rel.* David Bialeck, Inc. v. Ferguson, 58 So.2d 145 (Fla. 1952).

ter 42] and not to judges under local or special acts."[26] Despite these cases, the Attorney General, expressing no opinion on the constitutionality of section 42.09, advised that in the event of the absence or disqualification of the judge chapter 38.09 of the Florida Statutes should empower the Governor to appoint a J. P. for this purpose.[27] Several of the special acts have taken care of this question by wisely providing for the appointment by the circuit judge of a judge ad litem, who must be a member of the bar, or the substitution of a judge of another court in the county, such as a judge of a civil court of record or circuit judge.

Service

Section 42.10, divided into seven subsections, provides for commencing the action by filing a concise statement of claim *free from technicalities,* signed or verified by the plaintiff or his agent. It is probable that a corporation may file suit on its own behalf but that a collection agency may not sue on behalf of its patrons. A collection agent may, however, take an assignment of a claim and file it as plaintiff in his own name. The judge or clerk is authorized to render assistance in the preparation of the statements of claims and other papers required to be filed. This would necessarily include assistance to defendants also. The judge should refrain from rendering this assistance and allow the cleark to perform such duties.

The section contains authority for service on defendants by registered mail. This process runs throughout the state[28] but, of course, not outside the state. Although at least one special act authorizes the use of certified mail,[29] this method of service is not contemplated by the general law.[30] Since the passage of the general law the cost of registered mail has increased, but the extra cost cannot be passed on to the litigant.[31] Since jurisdiction depends on valid service on the defendant, care should be taken in the use of mail for service. The statute requires a return receipt but does not specify who must sign it, so presumably only the defendant can sign. Some judges go further and hold service to be good if the signature is that of a member of the

[26]58 So.2d 319, 322 (Fla. 1952).
[27]REP. ATT'Y GEN. FLA. 46 (1953).
[28]Op. Att'y Gen. Fla. 055-336 (Dec. 21, 1955).
[29]Palm Beach County, Fla. Laws 1955, c. 30086.
[30]Op. Att'y Gen. Fla. 055-165 (July 20, 1955).
[31]Op. Att'y Gen. Fla. 055-136 (June 17, 1955).

defendant's household who is over the age of fifteen years. It would not seem objectionable to let the plaintiff pay the additional cost of sending a registered letter to "addressee only," nor could there be any valid objection to charging the extra postage required when there is more than one defendant.[32] If the defendant appears, any defect in the service will be cured; but a default judgment would have to be set aside at any time upon showing that the defendant did not actually receive the notice, since the return receipt is only prima facie evidence of service.

Service may also be made by any person not a party or otherwise interested in the suit who is appointed by the judge; but, since no compensation is allowed such a person, this provision is somewhat impractical. If a sheriff or constable makes the service, he is compensated according to general law. For the sake of economy, service by mail should be attempted; if it fails or if there is doubtful service, the sheriff or constable may be employed.

A memorandum of the trial date can be handed to the plaintiff when he files his case or it can be mailed to him. Some courts use one practice, some the other; each has its advantages and disadvantages.

Filing Fees

Section 42.11 provides for a $3.50 filing fee — except in cases of garnishment, attachment, replevin, or distress, when the fee is $10.00 — which includes service of notice if made by mail rather than by the sheriff. It is necessary to reconcile the return dates provided under general law with the "not less than five nor more than fifteen" when the actions of garnishment, attachment, replevin, or distress are used. It also would follow that the plaintiff should be required to make bond in these possessory actions when property of the defendant is taken prior to final judgment, and in garnishment proceedings an additional $10.00 deposit should be required of the plaintiff for the garnishee's attorney if one is employed.[33] This section, read with section 42.03, gives the court jurisdiction of every sort of civil action except those vested solely in another court by the Constitution.[34]

Woven into section 42.11 is the authority of the court to waive the

[32]See discussion under "Filing Fees," *infra.*

[33]FLA. STAT. §77.28 (1953).

[34]REP. ATT'Y GEN. FLA. 90 (1951).

filing fee in deserving cases. Should the plaintiff prevail it would seem proper to tax costs against the defendant to repay the court. The author has found that in about half of the cases in which the costs have been waived the plaintiff fails to appear for trial; these are usually the times when the defendant is present and righteously indignant.

This section also authorizes the taxing of costs in the judge's discretion. This may mean that the costs may be apportioned, as in chancery cases, but the best rule would require that the loser pay according to fundamental law. This could include court reporter's charges under a 1955 law.[35] It would also include the cost of a jury.[36] The Attorney General has advised that an execution is incidental to a suit and that an extra charge therefor, or taxing it as costs, would be unwarranted. The court may charge for certified copies of judgments,[37] however, an expense not taxable as costs.

Informal Powers of the Judge

Sections 42.12 and 42.14 vest the court with broad and informal powers that are of extreme importance to the ultimate results obtained. The former section instructs the judge to set the trial on the return day or within ten days thereafter. This provision, reflecting the act's contemplation of speedy procedure, raises a question. If additional time is needed for such contingencies as obtaining an out-of-state deposition, then what? In other respects these sections give the defendant a real opportunity to work out his problems if he is so inclined, and it is a pleasant surprise to discover how many people actually want to pay their obligations but do not know the meaning of the word "budget."

A defendant unrepresented by counsel should be advised of his rights under the substantive law, that is, constitutional and statutory exemptions, and of his defenses, such as the statute of limitations, usury, and the like, and should be allowed to interpose them if he chooses. This he may easily do, since no written defensive pleadings are required. The defendant should also be advised of the possible consequences of a jugment being entered against him. Most people, even those who are "judgment proof," do not want to risk having

[35]Fla. Laws 1955, c. 29689.
[36]REP. ATT'Y GEN. FLA. 83 (1952).
[37]REP. ATT'Y GEN. FLA. 77 (1952).

their good names and credit impaired and usually make an effort to amortize their obligations with the help of a considerate judge.

Setoffs and Counterclaims

Section 42.13 authorizes the filing of written pleadings by the defendant in the court's discretion. When deemed necessary, the court, through the clerk, should render assistance in drafting as freely to the defendant as to the plaintiff. If the plaintiff is taken by surprise by a counterclaim or setoff, he by all means should be given time to prepare a defense; and the statute so provides. If the defendant thinks that he has a claim against the plaintiff he should be advised to assert and prove it if he can; otherwise he later may find himself estopped by judgment to assert it. So far, so good, if the counterclaim is within the jurisdiction of the court.

The case of *Simon v. DeCarie,* which originated in Palm Beach County, is illustrative of jurisdictional problems occurring when a counterclaim demands an amount in excess of the court's statutory jurisdiction. Simon claimed $238 due from DeCarie, who counterclaimed for $2,000 and insisted that the case be transferred to the circuit court. The counterclaim had all the earmarks of a sham pleading interposed for delay, and the small claims court denied the motion to transfer the cause and entered judgment for the plaintiff. On appeal, Circuit Judge Joseph S. White held:[38]

> "It is the view of the Court that 42.12, 52.11 and 52.12 are in pari materia. Upon the coming on of the compulsory counterclaim in excess of the jurisdiction of the Small Claims Court, the cause should have been transferred in accordance with Statute 52.12."

This point of law was affirmed March 13, 1953, by the Supreme Court when it denied certiorari without opinion.[39] Thereafter several defendants sought delay by making preposterous counterclaims; a deposit in the amount of the circuit court filing fee was then required by the court to assure good faith, until a similar requirement was incorporated into the 1955 Palm Beach County act. The required deposit has had the effect of separating the genuine counterclaims from the fictitious ones.

[38]Simon v. DeCarie, unreported (15th Cir. Fla., Mar. 10, 1952), *cert. denied,* 66 So.2d 309 (Fla. 1953).

[39]66 So.2d 309 (Fla. 1953).

Rules and Forms

Section 42.15, providing a general procedure to be followed in rule making, is apparently little used. It is probable that, if formal rules were adopted, arguments on their meaning and interpretation would consume time that could be more appropriately used in trying the cases at hand on their merits. After a court has begun to function, custom and usage will develop a "common law" system of procedure. By informal stipulation made in open court a method of procedure is agreed upon in an unusual case. These agreements made from time to time began to form a pattern of procedure. It has been found that by conducting the court in this fashion flexibility is maintained and, if the fundamental rule of due process is observed, no other formal rules are necessary. This section also authorizes the judge to prescribe, modify, and improve the forms to be used. In this state there are many forms prescribed by the statutes and textwriters that have been judicially approved. They are easily adaptable for use in small claims courts.

Trial by Jury

Section 42.16 is important because without it all of chapter 42 might well be unconstitutional for failure to provide for a trial by jury.[40] The section is otherwise of little importance because of the infrequency of actual jury trials in small claims courts. The Attorney General in 1952 advised[41] that a jury should be selected in the same manner as in justice of the peace courts,[42] that jurors should be paid according to the general law,[43] that the sheriff should be paid for summoning the jury,[44] and that these costs should follow the judgment.

In 1937 the Court held that a party could not be required to make advance deposit of a sum sufficient to pay for a jury in the county judge's court,[45] but this case has probably been modified by the Court's

[40]See State *ex rel.* Murphy-McDonald Builders' Supply Co. v. Parks, 43 So.2d 347 (Fla. 1949).

[41]REP. ATT'Y GEN. FLA. 83 (1952) (dealing with the Duval County court, created by special act); *accord* in the case of a population act court, REP. ATT'Y GEN. FLA. 46 (1953).

[42]FLA. STAT. §81.08 (1953).

[43]FLA. STAT. §40.24 (1953).

[44]FLA. STAT. §30.24 (1953).

[45]State *ex rel.* Jennings v. Peacock, 126 Fla. 743, 171 So. 821 (1937).

holding that a statute to this effect is not a denial of due process.[46]

Each party litigant to small claims trials may avail himself of the general law[47] and use three peremptory challenges to veniremen.[48]

Execution

Section 42.17 provides that a judgment of a small claims court becomes a lien on the defendant's realty when a transcript of the judgment is filed in the office of the clerk of the circuit court in the county in which the land is situated. This is similar to a generally applicable provision[49] long used in this state, wherein the words "certified transcript" are used.

This section also provides that execution may be issued upon judgment, to be enforced throughout the state. Obviously the small claims court rendering the judgment issues the execution, not the circuit court clerk in another county where the certified copy has been recorded.[50]

Appeals

Section 42.18 allows appeals from small claims courts to the circuit court in the manner provided for appeals from county judges' courts. The 1955 Legislature amended chapter 59 to include a procedure for appeals from all inferior courts and at the same time repealed chapter 61, which was formerly the prescribed method. There is no appeal from the decision of the circuit court on an appeal from a small claims court, but the case may be considered by the Supreme Court on certiorari.[51]

Claim and Notice

Section 42.19 sets out a form for a statement of claims and notice to the defendant. It is not good practice to try to improve on a statu-

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[46]State *ex rel.* Murphy-McDonald Builders' Supply Co. v. Parks, 43 So.2d 347 (Fla. 1949).

[47]FLA. STAT. §54.11 (1953).

[48]REP. ATT'Y GEN. FLA. 50 (1953).

[49]FLA. STAT. §55.10 (1953).

[50]REP. ATT'Y GEN. FLA. 86 (1951).

[51]Sachs v. Lalumera, 43 So.2d 342 (Fla. 1949); Brundage v. O'Berry, 101 Fla. 320, 134 So. 520 (1931).

tory form but the defendant's address might well be included in the caption of the statement of claim. As to verification of the claim under oath, the form is vague, but the better practice is to have the person filing the claim swear to it unless he is an attorney representing a client. The statutory forms are available in all of the courts and are provided to litigants upon request.

Funds for Operation

The county commission is required to provide suitable quarters and necessary equipment, maintenance, and supplies for the court.[52] The Attorney General advises on constitutional grounds[53] that the court should be located at the county seat but not necessarily in the courthouse.[54] Just what is "necessary" equipment probably differs in the various counties. The Attorney General reasons that the same principles should apply in this case as apply to other courts of record under the fee system and that "capital equipment," often referred to as substantial items, should be purchased by the county, with the court bearing other costs.[55] Conceding that the author is prejudiced, it appears that the plain intent of the act is to make sure that these little courts will function with no quibbling over what is capital expense and what is operating expense; they should not be dependent on the small income from low filing fees. The Florida Supreme Court has held[56] that the statute requiring Duval County to provide necessary equipment, maintenance, and supplies for its small claims court imposes a continuing duty that is not discharged by merely providing funds for the balance of the fiscal period during which the court was created. The section here construed is identical with its counterpart in the general law.[57]

The general law does not provide for a court registry into which funds may be tendered. On the theory that this is a function inherent in any court, a registry is maintained by many of the small claims courts. Likewise there is no provision for proceedings supplementary to execution, and on the same theory such proceedings are had. Nor

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[52]FLA. STAT. §42.20 (1953).
[53]FLA. CONST. art. XVI, §4.
[54]REP. ATT'Y GEN. FLA. 79 (1951).
[55]REP. ATT'Y GEN. FLA. 252 (1952).
[56]Green v. Taylor, 70 So.2d 502 (Fla. 1954).
[57]FLA. STAT. §42.20 (1953).

is there a provision for the compensation of a guardian ad litem or any attorney appointed under the Soldiers' and Sailors' Relief Act. Although the times are rare when the use or need for these features comes into play, several of the special acts have incorporated them.[58]

In conclusion, these small claims courts provide forums in which practicing attorneys can afford to handle small cases at a profit. The procedure should be kept simple and inexpensive. The bar must not alienate the favor of the lay public by encumbering these "people's courts" with the technical procedure they were designed to eliminate.

[58] *E.g.*, Fla. Laws 1955, c. 30086.