Golden Gate University Law Review

Volume 1 | Issue 1 Article 5

January 1971

# Small Claims Legislation: A Legislative Proposal Concerning California Small Claims Courts

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# SMALL CLAIMS LEGISLATION

## A LEGISLATIVE PROPOSAL CONCERNING

## CALIFORNIA SMALL CLAIMS COURTS

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GOLDEN GATE LAW REVIEW

APRIL, 1971

# FOREWORD

What influence can laymen exert upon the processes of lawmaking? It is clear to anyone observing the political scene that simple writing of papers or letters to the editor, or making of speeches are generally not effective ways of influencing the course of legislation. The possibility of a legislature taking action out of no more stimulus than someone saying "there is need for reform in ----" is terribly remote. This is true no matter how sincere the declarant or how worthy the cause.

The Legislative Project of the Golden Gate Law Review is investigating the feasibility of lay drafted legislation and how it might be proposed to sympathetic legislators for introduction into the legislative process. A properly presented draft of proposed legislation makes the merits of the reform sought more clearly identifiable to the legislature. It reduces the work of the legislature by converting ideas into statutory examples.

It is not necessary that lawyers draft legislation. Statutes regulate many fields in which empirical knowledge is remote from the skills of lawyers. Specialists in such fields can enhance their proposals by submitting them to the appropriate legislative committee in a competent form, com-
with author's notes justifying the proposal.

## SMALL CLAIMS LEGISLATION

The particular interest of this project is the operation of the small claims courts of California. The five bills set forth herein will be presented together with the rationale behind them as found in the author's notes, for actual consideration by certain legislators for potential sponsorship. The staff members feel that this form is likely to have more effect than the traditional law review article, comment or note.

AN ACT TO AMEND SECTION 117 OF THE CODE OF CIVIL PROCEDURE, RELATING TO SMALL CLAIMS COURT

The People of the State of California do enact as follows:

117. All judges of the justice court, except as otherwise provided in this section, and judges of the municipal court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of said jurisdiction shall be known and referred to as the small claims court; provided that the jurisdiction of such court, when sitting as a small claims court, shall be confined to cases commenced by natural persons, real party in interest, for the recovery of money only where the amount claimed does not exceed three hundred dollars ($300), except that a municipal court judge sitting as a small claims court shall also have jurisdiction in proceedings commenced by such persons in unlawful detainer after default in rent for residential property where the term of tenancy is not greater than month to month, and where the whole amount claimed is three hundred dollars ($300) or less.

Such courts shall have jurisdiction in actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

Action shall be commenced and maintained in small claims court as follows:

(1) When a defendant has contracted to perform an obligation, an action founded on such obligation may be commenced and maintained in the judicial district in which the defendant, or any such defendant, resides at the commencement of the action, or, where a defendant has contracted to perform an obligation within a particular judicial district, the court in its sound discretion, may cause the action to be removed to the judicial district where such obligation is to be performed in accordance with such considerations as may be fair and just.[1]

1. *Underlined material added and the following paragraph deleted:*

*"(1) When a defendant has contracted to perform an obligation in a particular judicial district, an action founded on such obligation may be commenced and maintained either in the judicial district where such obligation is to be performed, or in which the defendant, or any such defendant resides at the commencement of the action."*

(2) When the action be for injury to person or to personal property, either the judicial district where the injury occurs, or where the defendants, or any of them, reside at the commencement of the action, shall be the proper judicial district for the trial of the action.

(3) In all other cases, actions shall be commenced and maintained in the judicial district in which the defendant, or any such defendant, resides at the commencement of the action.

AN ACT TO AMEND SECTION 117f OF THE CODE OF CIVIL PROCEDURE, RELATING TO SMALL CLAIMS COURT

The People of the State of California do enact as follows:

117f. No claim shall be filed by or prosecuted in such small claims court by the assignee of such claim for the purpose of collection, or by any corporation or partnership, or by any natural person where the claim asserted arises out of claimant's doing substantial business in the lending of money at interest. A person who, as part of one transaction, acquires both a negotiable instrument specifying an interest or finance charge and a purchase money security interest does such business.[1] Nothing in this section shall prevent the filing or prosecution of a claim by a trustee in bankruptcy in the exercise of his duties as trustee.[2]

1. *Underlined material added and the following sentence deleted:*

   *"No claim shall be filed by or prosecuted in such small claims court by the assignee of such claim."*

2. *The following material is deleted:*

   *"...or by a holder of a conditional sales contract who has purchased such contract for his portfolio of investments and who is not an assignee for the purposes of collection."*

# SMALL CLAIMS LEGISLATION

## AN ACT TO AMEND SECTION 117g OF THE CODE OF CIVIL PROCEDURE, RELATING TO SMALL CLAIMS COURT

The People of the State of California do enact as follows:

117g. No attorney at law or other person than the plaintiff and defendant shall take any part in the filing or the prosecution or defense of litigation in the small claims court, except as otherwise provided in this chapter. A person as a trustee in bankruptcy[1] may file or prosecute a claim in a small claims court in the same manner as any other claimant or plaintiff. The plaintiff and defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, or, with the permission of the court, at any other time. The presence of the plaintiff or defendant, whether individual or corporate, at the hearing shall not be required to permit the proof of the items of an account but such proof shall be in accordance with the provisions of Sections 1270 and 1271 of the Evidence Code. The judge or justice may also informally make any investigation of the controversy between the parties either in or out of court and give judgment and make such orders as to time of payment or otherwise as may, by him, be deemed to be right and just. The provisions of Section 579 of the Code of Civil Procedure are hereby made applicable to small claims court actions.

1. *The following material is deleted:*

   *"... or a holder of a conditional sales contract described in Section 117f..."*

AN ACT TO ADD SECTION 117gg TO THE CODE OF CIVIL PROCEDURE, RELATING TO SMALL CLAIMS COURT

The People of the State of California do enact as follows:

117gg. Assistance by the lay representative of his choice will be permitted any indigent person throughout small claims court procedure upon referral to such representative, not a member of the bar, by any qualified legal aid office or society. Assistance of plaintiffs and defendants generally by lay representatives will additionally be permitted under such conditions as may be provided by the rules of the Judicial Council.

# SMALL CLAIMS LEGISLATION

## AN ACT TO ADD SECTION 118 TO THE CODE OF CIVIL PROCEDURE, RELATING TO SIMPLIFIED PROCEDURE FOR CERTAIN SMALL CLAIMS

The People of the State of California do enact as follows:

118. The justice courts and municipal courts may, as provided by rules of the Judicial Council, require that all cases which are at issue where the amount in controversy shall be one thousand dollars ($1,000), or less, except those involving title to real estate, shall, with the written consent of the parties, first be submitted to a board of three (3) members of the bar within the judicial district and convened by the court; provided, however, that in cases where the amount in controversy is equal to or less than the jurisdictional limit of small claims court as set forth in Section 117 of the Code of Civil Procedure, only the consent of the complainant is required. Only cases which are at issue and where suit has been filed may be referred to such Simplified Procedure.

No claim will be filed by or prosecuted in such Simplified Procedure by the assignee of such claim for collection purposes.

118a. The appointment of arbitrators shall be as provided by rules of court and shall be drawn from a list of volunteer attorneys within the judicial district; provided, however, that any attorney having an interest in the outcome or a close association with one of the parties in any case shall cause himself to be excused, or upon the petition of either party, may be excused by consent of the other two members of the board or by the convening judge.

All rules and adjudications of the board will be determined by majority vote. Hearings are to be informal in nature, and awards are to be made giving due weight to circumstances and considerations attendant to the issues as may be deemed fair and just.

118b. The board of three members of the bar shall be appointed not later than ten days after the case is at issue. The day, hour and place of meeting of the arbitrators shall be fixed by the parties, if present and able to agree thereon, but otherwise, it shall be the duty of the clerk of the convening court to determine same; provided, in such latter case, the day and meeting shall be not less than ten, nor more than twenty days after appointment of the board.

The board shall render its award within twenty days after the hearing.

118c. Every award rendered by Simplified Procedure shall have the effect of a judgment with respect to the party against whom it is made, from the time of the entry thereof. The judgment of the board shall, however, be stayed automatically, without the filing of a bond, until the expiration of the time for appeal, and if an appeal is perfected, until the appeal is decided.

If the appeal shall not be entered within the time limited, it shall be the duty of the convening court, at the request of the party in whose favor the award shall have been made, and the payment of the prescribed fee not to exceed five dollars ($5), to certify such judgment in substantially the form set out in Section 117m of the Code of Civil Procedure, and to issue execution, or such other process as may be necessary and proper to carry into effect the judgment entered upon such award.

118d. If either party is dissatisfied with the award, he may appeal to the court of competent jurisdiction upon payment to that court such fees as are charged upon filing an action in such court and, in addition, the costs of Simplified Procedure. Costs to be paid by appellant may be recovered of adverse party upon a judgment on appeal favorable to appellant, including a fifteen dollar ($15) attorney's fee, if appellant is entitled to recover costs; provided, however, costs of compensation paid to arbitrators shall not be recovered from the adverse party.

118e. Except as otherwise provided hereinbelow, the plaintiff and defendant shall have the right to counsel, and the right to offer evidence in their behalf by witnesses appearing at such hearing, or with the permission of the board, at any other time. The presence of the plaintiff or defendant, whether individual or corporate, at the hearing shall not be required to permit the proof of items of an account, but such proof shall be in accordance with the provisions of Sections 1270 and 1271 of the Evidence Code. The board may also informally make any investigation of the controversy between the parties either in or out of hearing session and give judgment and make such awards as to time of payment or otherwise as may, by the board, be deemed fair and just. The provisions of Section 579 of the Code of Civil Procedure are hereby made applicable to Simplified Procedure,

Provided,
(a) no attorney at law or other person than the plaintiff and defendant shall take part in the filing or the prosecution or defense of claims in Simplified Procedure, where the amount in controversy is within the

jurisdictional limits of small claims court as specified in Section 117 of the Code of Civil Procedure, except,

(b) assistance by the lay representative of his choice will be permitted any indigent person throughout Simplified Procedure upon referral to such representative, not a member of the bar, by any qualified legal aid office or society. Assistance of plaintiffs and defendants generally by lay representatives will additionally be permitted under such conditions as may be provided by the rules of the Judicial Council.

118f. The provisions in substance of Sections 117a, 117c, 117h, 117l, 117o, 117p, 117q and 117r of the Code of Civil Procedure are hereby made applicable to Simplified Procedure.

118g. The clerk of the convening court shall enter in his register of actions:

1. The title of every action heard in Simplified Procedure;
2. The sum of money claimed;
3. The date of the order to appear, and the date of the hearing as stated in such order;
4. The date when the parties appear, or their nonappearance if default be made;
5. Every adjournment, stating on whose application and to what time;
6. The judgment of the board and when returned;
7. A statement of any money paid to the board, the court, or clerk, when, and by whom; and the date of the issuance of any abstract of the judgment;
8. The date of the receipt of a notice of appeal, and of the appeal bond.

# AUTHOR'S NOTES

## HISTORY

Prior to 1913, the judicial system was not equipped to handle small claims. The relatively small dollar value of the claim could not absorb the cost, delay and procedural difficulties of the regular courts.[1] Since that time the establishment of the small claims courts and conciliation courts has provided the needed forum.[2] A majority of states has enacted legislation designed to meet this need. Congress also endorsed this movement when it created a small claims court and conciliation branch in the Municipal Court of the District of Columbia.[3]

There were two historically articulated purposes for the creation of small claims and conciliation courts. First, such courts seem to have been born out of a widely held feeling that the poor, as a class, were in various stages of alienation from the administration of justice. There was no forum

1. *See generally*, R. Smith and J. Bradway, Growth of Legal Aid Work in the United States, U.S. Dept. of Labor Bull. No. 607 (1936); Small Claims Court: Reform Revisited, 5:2 Colum. J. of L. and Soc. Problems, 47 (1969)
2. See generally, R. Smith, Justice and the Poor (3rd Ed. 1924); Maguire, Poverty and Civil Litigation, 36 Harv. L. Rev. 361 (1923); Pound, The Administration of Justice in the Modern City, 26 Harv. L. Rev. 302 (1913).
3. Hearings on S 1835 Before the District of Columbia Comm. of the Senate, 75th Cong., 1st Sess. (1937); D.C. Code Sections 11-1301, et seq., 13-101, 16-3901 et seq. (1967).

which extended the remedial goals of American jurisprudence to those with a small claim. As a result, a general trend of legislatures was to stress the importance of small claims courts from the litigant's standpoint.[4] The other stated purpose concerned the need to employ an informal, inquisitional system to provide a speedy, efficient and inexpensive forum for small controversies.[5] The economy of the inquisitional system facilitated small scale litigation, as is evidenced by the long and relatively successful history of small claims operation in the majority of states and the District of Columbia.[6]

In recent years, with the increasing concern for such phenomena as consumer protection legislation, landlord-tenant abuses, patterns of institutionalized inequality with respect to minorities, and equal justice for all citizens without regard to ability to pay, small claims courts have come under increasingly hostile attack.[7]

A recent article[8] by Judge Skelly Wright points up the indigent litigant's frequent confrontation with a set of legal

4. *Lummus, Justice in Minor Courts Appraised by Expert, 22 J. Am. Jud. Soc'y 38, 39 (1938)*
5. *Colum. J. of L. and Soc. Problems, supra, note 1*
6. *Id. at 47 n. 8*
7. *B. Moulton, The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California, 21 Stan. L. Rev. 1657 (1969); The California Small Claims Court, 52 Calif. L. Rev. 876 (1964); Hearings of Senate Interim Committee on General Research Sub-committee on Judiciary, 1970 Regular Session, California Senate Judiciary Committee, Sept. 14, 1970.*
8. *Wright, The Courts Have Failed the Poor, N.Y. Times, March 9, 1969, Section 6 (Magazine) at 26.*

institutions" . . . geared for, and used for the benefit of, the manufacturer-seller-financier complex . . ."[9] In an empirical analysis of the Alameda County small claims court during 1963, it was found that individuals were defendants in 85% of the cases, while only 35% of plaintiffs were individuals.[10] More than half of all claims were groups of an average of ten to fifteen actions brought by a single plaintiff. The group claimants included many well-known stores who do a substantial business in revolving credit.[11]

PROBLEMS WITH CALIFORNIA'S SMALL CLAIMS COURTS

The informality and simplicity of small claims procedure is one of the oft-cited blessings of the small claims court system. However that procedure can do a poor job of giving a layman notice of the exact nature of the case against him. He is informed by the complaint that a sum of money is owed for certain goods or services contracted for on or about a certain date. But he does not, in all likelihood, know the exact goods or services in controversy, or whether he has express or implied warranty rights. [12] He is unfamiliar with

9. *Id.*
10. *52 Calif. L. Rev. 876, 884, supra note 7*
11. *Id. p. 897. Hearings of Senate Interim Committe on General Research Subcommittee on Judiciary, 1970 Regular Session, California Senate Judiciary Committee, Sept. 14, 1970. (hereinafter cited as 1970 Hearings)*
12. *See, for example, Cal Com. Code, Section 2314, et seq.,*

contracts and waivers, not to mention the complex Uniform Commercial Code (see infra). He can neither afford, nor be permitted to secure the representation of counsel.[13]

There is no correlation whatever between the relative smallness of the amount in controversy and the complexity of the legal issues of their evidentiary requirements. The current faith in a legal system in which the judge initiates all the evidence on both sides and in which the court is required to make all objective inquiry into the law seems naive. In reality small claim matters appear to be considered simplistically by the courts.

In one instance a Mexican-American defendant had been coached as to his defenses under the Unruh Act governing installment sales.[14] At his hearing the presiding judge commenced by asking, "Do you owe the money?" The defendant replied, "Yes," and the dispute was settled.[15]

A recent Wall Street Journal account illustrates an Oakland landlord's use of small claims eviction procedure to avoid defenses potentially available to the low-income black

*(West 1964); and Cal. Civ. Code Section 1804.7 et seq. (West. Supp. 1971).*

13. *Cal. Code Civ. Pro., Section 117g (West Supp. 1971).*
14. *Cal. Civ. Code, Section 1801-1812.9 (West Supp. 1971).*
15. *B. Moulton, supra note 6 at 1664. See also, remarks of Judge Winton McKibben of the Oakland-Piedmont Municipal Court, reported in Judicial Council of California, Proceedings of the 1966 Institute for Municipal and Justice Court Judges 121, 125 (1966).*

tenant. The landlord was delighted to learn that he is able to accomplish an eviction in 20 days, at the cost of $3.00, and without interference from legal aid lawyers who are not permitted in small claims court.[16]

Members of the San Francisco Municipal Court bench, in addition to their regular trial load, sit in small claims court one hour each morning and commonly hear some five cases in that hour. They do not have time to adequately treat the questions of law suggested by the facts.

"An appraisal of small claims courts necessarily poses the question of whether we feel it is important to reduce the alienation of the poor and to increase their sense of participation in the legal process. It is not enough to look at the surface efficiency of small claims courts and the apparent saving of judicial resources without asking how this efficiency and economy is obtained, and at whose expense. If a poor man sees the $300 claim of his unscrupulous creditor simply rubber-stamped by an unsympathetic judge, he not only suffers a financial loss that is relatively serious to him;

16. *Buel, Banks, City, Landlords Contribute to Decay in Ghetto in Oakland, Wall Street Journal, Jan. 30, 1969, at 1, Col. 6. Note that the sheriff will not accept a writ to dispossess until expiration of the prescribed time for appeal set forth in Cal. Code Civ. Pro. Sec. 117(j). However, a landlord with a judgment can effect dispossession by bluffing, or by reentering the premises as this landlord has done.*

he is also left with the impression that the law moves in an incomprehensible way to do the rich man's bidding. 'For [the poor man],' said Attorney General Robert Kennedy, 'the law is always taking something away.'"[17]

## ADDITIONAL PROBLEMS POSED BY BUSINESS ENTITIES

In one half of all small claim actions brought by corporations reviewed in a pilot study,[18] the defendant was an out-of-county defendant.[19] Somewhere between 50% and 98% of all contract actions in small claims courts go by way of default.[20] In a default case, the court is apparently constitutionally prevented from requiring that the plaintiff prove his case.[21] The court may not go beyond the note sued upon in order to inquire into circumstances possibly giving rise to defenses. It can not even inquire whether the assignee of a claim acquired it after a cause of action arose, thereby falling within the forbidden category of an assignee for collection purposes!

Causes of action may be split in order to avoid the jurisdictional limits of small claims courts.[22] This is typically done by the retailer or assignee holding an installment sales

17. *Moulton, supra, at 1669*
18. *52 Cal. L. Rev. 876, 884, supra*
19. *Id. at 888*
20. *1970 Hearings, supra note 11*
21. *Id.*
22. *Id.*

contract and asserting the claim periodically, coming always within the $300 limit. The total underlying obligation may be much more than $300.

In small claims court, an action on a note given as part of a retail sales transaction is brought either by the seller, or by his assignee. The problems which arise as a result of sellers bringing actions in small claims court have been discussed. However, those considerations presented by actions brought by an assignee are amoung the most difficult raised by an examination of small claims court operations. We are not here concerned with the unethical practices of unscrupulous creditors. Under examination here is the legitimate transaction in commercial paper which sellers and their financing institutions enter into in order to do business.

The traditional approach, which followed the public policy objective of fostering commerce, was that a bona fide purchaser for value without notice of any infirmities of the instrument has the superior equity. The traditional rule has been codified by the Uniform Commercial Code in California.[23] Section 3305 makes "holders-in-due-course" immune from most defenses under the basic contract.[24] However, California decisional law does not allow this immunity where it appears that the seller and his assignee are so close.

*23. Cal. Com. Code, Section 3302 (West 1964)*
*24. Cal. Com. Code, Section 3305 (West 1964)*

related by virtue of their business dealings that the assignee can no longer be said to have no notice of warranty or other claims. He is not able, in such instances, to establish himself as an innocent third party.[25]

The impact of these cases in no way undermines the uniform regulation of the law of negotiable instruments, as the Uniform Commercial Code anticipates such results in the area of the sale or lease of consumer goods.[26] The Unruh legislation[27] is another instance of this anticipated modification of the uniform approach to commercial law.

In small claims court operation, however, no such inquiry is made, notwithstanding the fact that the defendant may have defenses under Unruh, or that the assignee may not qualify as a holder-in-due-course.[28] The informal procedure, together with the speed with which such cases are handled, renders

25. *Morgan v. Reasor Corp., 69 C. 2d 881; 73 Cal. Rptr. 3; 447 P.2d 638 (1968); Commercial Credit Corp. v. Orange County Machine Works, 34 C. 2d 766, 214 P. 2d 819 (1950); Commercial Credit Co. v. Childs, 199 Ark. 1073; 137 S. W. 2d 260, 128 A.L.R. 726 (1940); Mutual Finance Co. v. Martin, 63 So. 2d 649, 44 A.L.R. 2d 1 (1953); Financial Credit Corp. v. Williams, 246 Md. 575, 229 A. 2d 712 (1967).*
26. *Farnsworth and Honnold, Cases on Commercial Law, note at p. 1007 (2d ed. 1968). The editors note that section 9-206 of the UCC bows to any statute or judicial decision which establishes a different rule for buyers lesees of consumer goods.*
27. *Cal. Civ. Code Section 1801 et. seq. (West Supp. 1971).*
28. *Hearings of Senate Interim Committee on General Reseach Subcommittee of Judiciary, 1970 Regular Session, California Senate Judiciary Committee, Sept. 14, 1970.*

impossible the adequate treatment of such cases in small claims courts. The bench, unassisted by any advocacy, is simply not equipped to do substantial justice. It can realistically do little more than allow the instrument to be enforced against a purchaser who may not know his rights and who must nevertheless defend himself alone.

It is suggested that reforms rendering it difficult for an assignee to assert his rights would tend to clog negotiability.[29] The realities, however, permit the assignee of notes made pursuant to conditional sales contracts to require the assignor to indemnify him against loss. Further, as a practical matter, dealers in this kind of commercial paper do not even have to assert their claim in many instances. Since frequently these parties are found within ongoing commercial relationships it is a simple accounting exercise for the assignee to debit any account payable to the assignor, which assignee maintains in his books, as a set-off. It would not be unreasonably burdensome for the vendor to spread this risk within his retail pricing mechanism or his installment credit interest price. It would, however, shift the risk of seller's insolvency and the burden of suit from the buyer to the financier, a person better able to bear the risk.

Finally, assuming that the general subordination of the rights of "holder-in-due-course" does clog negotiability,

29. Cal. Civ. Code Section 1801 et. seq. (West Supp. 1971).

it must necessarily be as a result of the widespread abuses of conditional sales contracting and financing.[30]

Notwithstanding the need to revise substantive commercial law, the small claims court enactment is not the proper vehicle for reform. It is enough for the purposes of this proposal not to allow actions brought by business entities. Their remedy is to be limited to that set forth in Section 118, The Simplified Procedure Act, infra.

## LAY ASSISTANCE

Compelling the unsophisticated or educationally handicapped person to prosecute his own action or defense often results in a bewildering and intimidating experience. The uninitiated discovers quickly that there is no one to help those inexperienced in the ways of the courthouse.[31] Conversely, the plaintiff will, more often than not, be a party who has brought small claims court action many times, and has all the expertise of a professional litigant.[32]

30. *Mutual Finance Co. v. Martin, supra note 25. A finance company which investigated the buyer's credit rating prior to the sale was denied the rights of holder-in-due-course. The court said, "If this opinion imposes great burdens on finance companies, it is a potent argument in favor of a rule which will afford protection to the general buying public against unscrupulous dealers in personal property." See also, Morgan v. Reasor Corp., supra, at 891*
31. *Moulton, supra, at 1663 n. 9*
32. *52 Calif. L. Rev. 876, supra, Appendix A, p. 893, Tables 1-8, Appendix B, p. 896, Tables 1-5. Hearings of Senate Interim Committee on General Research Subcommittee on Judiciary, 1970 Regular Session, California Senate Judiciary Committee, Sept. 14, 1970*

The exclusion of lawyers from small claims courts was born out of a notion of protecting the poor and relatively unsophisticated, and also the practical recognition that the economy of small claims courts could not absorb the costs of formal procedure and the adversary system. It would be fair to recognize both rationales as valid.

The problem, however, is that while its economy gives rise to incalculable benefit in the provision of society's remedial goals to the poor, such persons cannot be expected to handle their own causes in all, or even most, cases. English language difficulties, cultural or ethnic experience, lack of sophistication and knowledge of legal rights combine to give the "professional" or group plaintiff an unfair advantage.[33]

The proposed addition of Section 117gg is intended to make the services of third-year law students and qualified law clerks available to small claims courts. A party requesting aid in going forward with his cause or defense may be assisted by a student or law clerk who would make himself available as a litigation assistant, perhaps as a part of a clinical legal education program. The act specifically grants such assistance to an indigent party upon referral by a qualified legal aid office or society. The student or clerk can

33. *Hearings of Senate Interim Committee on General Research Subcommittee on Judiciary, 1970 Regular Session, California Senate Judiciary Committee, Sept. 14, 1970.*

elicit the facts from the plaintiff or defendant, expand the party's knowledge of his rights, both substantive and procedural, and accompany the party into court. This approach permits law students to serve an important legal function and perform a valuable government service, at no cost to the counties. Aware of small claims court procedure and conversant with substantive issues, the law student can save the court's time by providing a clear articulation of the position of his "client." The informal nature of the procedure also facilitates student representation.[34]

The New Jersey Supreme Court adopted rules in 1964 which permit law clerks and third-year law students to participate in small claims litigation upon referral by a legal aid society.[35] The law students gain valuable training and experience and afford to litigants assistance otherwise unavailable.[36] The reception of the New Jersey rules, from the student's standpoint at least, has been enthusiastic.[37]

Harvard Law School has had a program of student representation since 1914 in civil cases.[38]

To reiterate, the use of law students and clerks in the

*34. 21 Stan. L. Rev. 1657, supra, at 1681, n. 116*
*35. New Jersey Supreme Court Rules 1:12-8A(c).*
*36. Id. at 161 author's note*
*37. David, Legal Aid and the Lawyer, 1 Student Bar Journal (1970).*
*38. Wolf, D. C. Law Students in the Courthouse, D. C. Bar Journal (Nov.-Feb. 1969).*

small claims court can aid in dealing with two significant problems facing the legal profession: 1) preparing tomorrow's attorney for the complex legal and social issues of the day, and 2) meeting the need for legal services in the small claims courts for the individual litigant.[39]

39. *Sacks, Education for Professional Responsibility, The National Council on Legal Clinics, 46 A.B.A. Journal 1110 (1960).*

## THE SIMPLIFIED PROCEDURE ACT (SECTION 118)

The Simplified Procedure recommended herein is intended to be responsive to dual needs. First, it is necessary to provide a substitute forum to business entities which have been denied the use of the small claims courts, supra. Second, it provides a means of relieving municipal and justice court calendar congestion. This will be the exclusive remedial forum, short of the court of competent jurisdiction, for those actions commenced by business entities in which the amount in controversy is less than $300. In effect, it handles the problems of the business entities' small claims by allowing them to be regulated ex aequo et bono, by a board of arbitrators. This is to be distinguished from the small claims court, which follows the substantive law controlling the controversy.

The board of arbitrators, meeting informally, consists of three attorneys drawn from a list of volunteers within the judicial district. They are paid a small fee per case by the court. Operating under such rules as may be promulgated by the Judicial Council, the arbitrators are free to settle claims by following the law or by working compromise settlements, giving weight to the standards of the legal community in a manner analogous to a jury's general verdict on issues of fact. They can also initiate a deeper inquiry into the facts than is generally possible in small claims courts.

The Simplified Procedure is also intended to relieve the

calendar of the court of competent jurisdiction from a substantial number of cases, including those in which the amount in controversy is between $300 and $1000. All cases of less than $1000 which are proper candidates for arbitration would, with the consent of the parties, be submitted to the Simplified Procedure. Such cases include those more conveniently heard at times and locations other than during business hours at the courthouse. Minor accident claims would also be likely candidates for this procedure.

To avoid penalizing defendants brought before Simplified Procedure by increasing their costs upon an adverse judgment, a provision is included which limits costs to those amounts specified in sections 117p[40] and 117q.[41]

To avoid the due process objections based upon limita-

40. *Cal. Code Civ. Pro. Sec. 117p (West Supp. 1971). "117p. A fee of . . . two dollars ($2) shall be charged and collected for the filing of the affidavit for the commencement of any action, for each defendant to whom a copy of the affidavit is mailed by the clerk a fee of one dollar and fifty cents ($1.50) shall be charged and collected, and a fee of one dollar and fifty cents ($1.50) shall be charged and collected for the issuance of a writ of execution."*

41. *"117g. The prevailing party in any action in the small claims court is entitled to costs of the action and also the costs of execution upon a judgment rendered therein. Such costs shall include costs of service of the order for the appearance of the defendant."*

tions on the right to counsel or the right to trial by jury,[42] the mechanism of the automatic stay of execution of judgment included within Section 117j[43] is brought within the operation of Simplified Procedure. By automatically staying execution until the elapse of time permitted for appeal, or until completion of the appeal if taken, whichever is longer, the dissatisfied party is thereby guaranteed the right to a trial de novo, including the right to counsel.[44]

## THE PENNSYLVANIA SYSTEM

The Simplified Procedure is modeled in many respects after the Pennsylvania system of compulsory arbitration of small claims.[45] Since it became operative in 1952, the Pennsylvania scheme has been adjudged highly successful as a practical method of disposing of claims quickly and efficiently without using the courts.[46] In a study commenced under

42. *Mendoza v. Small Claims Court, 49 C.2d 668; 321 P.2d 9 (1958).*
*Skaff v. Small Claims Court for the L.A. Jud. Dist., 68 C.2d 76, 65 Cal.Rptr. 65, 435 P.2d 825 (1968).*
43. *"117j. If . . . judgment is for plaintiff, proceedings on the judgment are automatically stayed without the filing of a bond by defendant, until the expiration of the time for appeal, and, if an appeal has been perfected, until the appeal is decided."*
44. *51 Ops. Atty. Gen. 119 (1968).*
45. *Pa. Laws 1951. No. 590.*
46. *Rosenberg and Schubin, Trial by Lawyer; Compulsory Arbitration of Small Claims in Pennsylvania, 74 Harv. L. Rev. 448 (1960-61).*

the auspices of the Columbia University Project of Effective Justice, Professor Rosenberg of Columbia and Attorney Schubin of the New York Bar empirically surveyed the Pennsylvania experience.[47] They lauded the Pennsylvania system for reducing the judicial workload.[48] However, they declined to comment on the "desirability of mandating second-class justice for smaller cases."[49]

The mechanics of the Pennsylvania plan provide for compulsory arbitration of claims up to $2,000.[50] Each claim is heard by three arbitrators who are members of the bar in the judicial district.[51] They are appointed by a court clerk from a list of consenting attorneys within ten days after the case is filed.[52] Fees, ranging from ten to fifty dollars per case for each arbitrator, have been set by the courts and are paid by the county.[53] The hearing generally takes place within a few weeks of appointment and awards are to be filed within 20 days of hearing.[54] The day, hour and place of meeting is fixed by the agreement of the parties, or in the absence of agreement, by a court clerk.[55] The arbitra-

47. Id. at 449.
48. Id. at 450.
49. Id.
50. Pa. Laws, 1957, No. 66.
51. Pa. Stat. Ann. Tit. 5, Section 31 (VII)(Supp. 1971).
52. Id., Section 31 (VIII).
53. Rosenberg and Schubin, supra, at 451
54. Id.
55. Id.

tion award is arrived at by majority vote, and has the effect of final judgment. No record need be kept of the proceedings and either party may appeal and receive a trial de novo in court.[56] "The appeal is received upon his repayment to the county of the costs of the arbitration proceedings, not to exceed 50% of the amount in controversy. This payment is not a recoverable item of costs even if the appealing party prevails."[57]

Authors Rosenberg and Schubin hypothesize that in 1958, some 859 full trials were saved out of the 5,740 cases that arbitrators heard. The 1959 projection called for a savings of 1,996 full trials.[58] Out of the 77 cases examined in the study, upon which there was both an arbitration and a trial de novo, about one-third produced a "reversal." Generally, arbitrators found for plaintiffs 38% more than juries in tort actions, and 25% more for plaintiffs than did juries in contract.[59] There is no way to determine which, if either, outcomes tended to be "right."

In the area of conciliation courts,[60] various states have adopted procedure which would require the filing of

56. Id. at 452
57. Id., Pa. Stat. Ann. Tit. 5, Section 71(V)(Supp.1971).
58. Rosenberg and Schubin, supra, at 459.
59. Id. at 465.
60. See generally, Northrop, Small Claims Courts and Conciliation Tribunals; A Bibliography, 33 Law Library Journal 39 (1940).

small claims in a court of competent jurisdiction to be accompanied with a conciliator's certification that conciliation had been attempted, but had failed.[61] A model conciliation act feature provided for an arbitration by the conciliator, upon the written consent of the parties.[62] The State of North Dakota was the first state to adopt this provision in 1921.

It is apparent, then, that the Pennsylvania statute and experience is merely a variation on a conciliation theme dating back many years, but updated to take into consideration the congestion of courts of limited jurisdiction.

## SUMMARY

This project is addressed to the obsolescence of the small claims court system in California. Under the proposed plan the economy of the present form of operation is substantially preserved. However, the aforementioned inequalities existing within small claims courts may be eliminated through its adoption. The proposed regulations, as set forth in the basic enactments,

61. *Klein v. Hutton; 49 N.D. 248, 191 N.W. 485, 167 A.L.R. 830 (1922).*
*Flour City Fuel and Transfer Co. v. Young; 150 Minn. 452, 185 N.W. 934 (1921).*
62. *"Act to Provide for Conciliation" 2 Journal of the American Judicature Society 151 (1919).*

(1) disallow business entities, i.e., corporations, partinerships and certain proprietorships the use of small claims courts;

(2) allow limited discretionary changes of venue in small claims courts;

(3) provide for third-year law students and qualified law clerks to increase the legal articulation of litigants and foster paractical education of the students; and

(4) create an arbitration system to handle certain small controversies in which one of the litigants is a business entity excluded from small claims or in which both parties consent to the arbitration and the amount in controversy is between $300 and $1,000.