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De Minimis Curat Lex

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DE MINIMIS CURAT LEX—Small Claims Courts in New York City

*Brian G. Driscoll**

A common complaint in the United States, and particularly in large urban areas where there is a great deal of civil litigation, is that the courts are unable to deal efficiently and justly with the cases that are brought before them. To a large portion of the public, however, the greater problem is the large number of cases that are never brought before the courts. These cases typically concern small amounts of money and are the type of dispute in which citizens in the lower and middle economic classes are most commonly involved. These cases may deal with an irate customer's five dollar claim against his cleaner, but they may also involve several hundreds or even a few thousand dollars in a disputed contract or personal injury case.

The nature of the legal system itself (complex adversarial proceedings necessitating professional counsel) and its breakdown (long delays in the adjudicatory procedure, often very careless consideration of the issues, and the rough justice that is meted out in courts with overcrowded dockets) more often than not discourage individuals with such cases from looking to the judicial system for relief. Even these relatively small claims may be quite significant in relation to the income of the potential litigants. Moreover, most people will never have a case big enough to bring to the courts for help. Thus they view the courts as a source of discouragement and frustration, a tool which others might use against them but which they can never use for their own interests.

I. Introduction

One method of handling these small problem cases within the existing judicial system is through the small claims courts.¹ These

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1. "Three basic policy objectives emerged from the rhetoric of the original reformers and from legislative action on the problem; 1) Analyzing the importance of a claim from the litigant's viewpoint, rather than with regard to such absolute determinants as dollar value or interest at the bar.

courts have been functioning for decades in various jurisdictions,² thus providing a wealth of experience and data on which to base judgments of their effectiveness in dealing with the problem cases which they were designed to resolve.

In the late nineteenth century, municipal courts in cities,³ and Justices of the Peace in less populous regions, were established⁴ for the purpose of handling the multitude of small cases that might be resolved without recourse to complicated civil litigation.⁵ However, as the cities grew, the dockets of the municipal courts became increasingly crowded with larger and more complicated cases.⁶ Although the municipal courts became valuable branches of the civil court systems,⁷ their very utility created demands for sophistication which impeded their effectiveness in the area they were originally created to serve. The Justices of the Peace also became less useful as the justice meted out in these courts became increasingly suspect, and doubts arose concerning the percentage fee system which provided their compensation.⁸

2) Avoiding alienation of large segments of the population from the court system. 3) Securing the integrity of judicial institutions." Note, *Small Claims Court: Reform Revisited*, 5 COLUM. J. L. & Soc. Prob. 47, 48 (Aug., 1969) (footnotes omitted) [hereinafter cited as *Reform Revisited*]. See Note, *The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California*, 21 STAN. L. REV. 1657 (1969) [hereinafter cited as *Persecution*] for goals of the small claims court movement in the United States.

2. See, e.g., CAL. CIV. PRO. CODE § 117 *et seq.* (West 1954); D.C. CODE ENCYCL. ANN. §§ 11-1301 *et seq.*, (1966) *Id.* §§ 13-101, 16-3901 *et seq.*; ILL. ANN. STAT., ch. 110A, §§ 281 *et seq.* (Supp. 1974); MASS. ANN. LAWS, ch. 218, §§ 21 *et seq.* (Supp. 1972); WIS. STAT. ANN. §§ 299.01 *et seq.* (Supp. 1973); TEX. REV. CIV. STAT. ANN., Art. 2460a (1971).

3. In New York, see Law of May 4, 1897, ch. 378, §§ 1350-84, 3 [1897] N.Y. Laws 481-95 (superseded 1901).

4. Justices were recognized in New York legislation much earlier. Law of Feb. 26, 1780, ch. 44, 1 [1777-80] Laws of New York 214-21. See E. LAUER, LAUER'S MUNICIPAL COURT PRACTICE AND FORMS 1-65 (2d ed. 1928).

5. See, e.g., Robinson, *A Small Claims Division for Chicago's New Circuit Court*, 44 CHI. B. REC. 421 (1963); Nordberg, *Farewell to Illinois J.P.'s—A Lesson from History*, *id.* at 469-78, 493.

6. Robinson, *supra* note 5, at 493.

7. See E. LAUER, LAUER'S MUNICIPAL COURT PRACTICE AND FORMS 1-65 (2d ed. 1928).

8. For an analysis of the insufficiencies of the Justice of the Peace

The first true small claims court in the United States was established in Kansas in 1913.⁹ This early court had two interesting features that have continued to be characteristic of such courts. The first was a statutory mandate that the judges act, as much as was possible within the bounds of judicial propriety, as a friend of the poor.¹⁰ The second, designed to assure that this would be an accessible forum, and one not too complicated for or inhospitable to the poor, prohibited the appearance of lawyers for the parties involved.¹¹

II. The Small Claims Court in New York

The New York Small Claims Court, on which this article shall focus, was established in 1934.¹² The original jurisdictional limit was a mere fifty dollars,¹³ and consistent with the spirit of the court, attorneys were strongly discouraged. As times have changed, however, so have the procedures and performance of the court.¹⁴ The

system, see Note, *Small Claims in Indiana*, 3 IND. LEGAL F. 517, 520-23 (1970).

9. Law of March 15, 1913, ch. 170, [1913] Laws of Kansas 261-63. It has been noted that an earlier small claims court was established in Cleveland, Ohio. Note, *The California Small Claims Court*, 52 CALIF. L. REV. 876, 877 (1964). In Ohio, however, the judge acted more as a mediator than as a presiding justice. SMALL CLAIMS STUDY GROUP, *THE SMALL CLAIMS COURTS AND THE AMERICAN CONSUMER* 30 (1972) [hereinafter cited as NATIONAL STUDY].

10. Law of March 15, 1913, ch. 170, § 2, [1913] Laws of Kansas 261-62. "It shall be the duty of the appointing power . . . to select as judge . . . some reputable resident citizen [sic] of approved integrity who is sympathetically inclined to consider the situation of the poor, friendless, and misfortunate . . ." *Id.*

11. *Id.* § 10.

12. Law of May 15, 1934, ch. 598, [1934] N.Y. Laws 1290-93. The present codification of the Small Claims statute for New York City is Article 18 of the N.Y.C. Civil Court Act which was a manifestation of the changes in small claims procedure and the reorganization of the court system in New York State in 1963. Thus the generally used provisions of the Municipal Court Code which had previously governed small claims in the state were for the most part restated in each of a number of new court acts including the Uniform District Court Act, the Uniform Civil Court Act and the New York City Civil Court Act.

13. *Id.*

14. The predisposition against lawyers and formal proceedings is still evident. Section 1804 of the New York City Civil Court Act states: "The court shall conduct hearings upon small claims in such manner as to do

question to keep in mind while examining these courts today is whether they have remained true to their original purpose of being a friend to the poor and providing an effective means of disposing of small problem cases.

Originally there were five main branches of the New York Small Claims Court, one in each borough.¹⁵ Two years ago, a second branch of the Small Claims Court in Manhattan was opened in Harlem to augment the downtown branch.¹⁶ Such decentralization, of course, makes the courts more physically accessible to the public. A question remains, however, as to the public's recognition of these courts as a means of resolving their relatively minor disputes.

A national report by the Small Claims Study Group¹⁷ indicated that across the nation there is an "information gap between the law and the layman" about the existence and purposes of the small claims courts, their location and accessibility, and the procedures and methods of making use of these courts.¹⁸ Although the report is

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, except statutory provisions relating to privileged communications and personal transactions or communications with a decedent or lunatic. Disclosure shall be unavailable in small claims procedure except upon order of the court on showing of proper circumstances. The provisions of this act and the rules of this court, together with the statutes and rules governing supreme court practice, shall apply to claims brought under this article so far as the same can be made applicable and are not in conflict with the provisions of this article; in case of conflict, the provisions of this article shall control." N.Y.C. CIVIL CT. ACT § 1804 (McKinney Supp. 1973) [hereinafter cited as CCA]. In deciding that plaintiffs need not furnish Bills of Particulars in these courts, one judge declared: "To require a layman to be possessed of detailed legal knowledge in procedure, or to require him to procure counsel at additional expense, is contrary to the intent of the Legislature in establishing the Small Claims Act." *Selman v. Appel's Garage & Serv. Station, Inc.*, 73 Misc. 2d 581, 582, 342 N.Y.S.2d 385, 386 (Long Beach City Ct. 1973). Some formalism, however, does still exist. See note 113, *infra*.

15. See N.Y.C. DEP'T OF CONSUMER AFFAIRS, HOW TO SUE IN SMALL CLAIMS COURT IN NEW YORK CITY AND HOW TO COLLECT A JUDGMENT 7 (1974) [hereinafter cited as HOW TO SUE].

16. *Id.*

17. NATIONAL STUDY, *supra* note 9.

18. Letter from Small Claims Study Group to Brian G. Driscoll, Dec.

enthusiastic about the New York Small Claims Court, an examination of the situation in New York reveals that the court is not all that it might be.

New York City does have a large and active Department of Consumer Affairs (D.C.A.) which, according to its staff attorneys, quite frequently refers aggrieved consumers to the Small Claims Courts.¹⁹ The D.C.A. has also prepared a booklet entitled "How to Sue in Small Claims Court in New York City and How to Collect a Judgment."²⁰ Although the Department thus helps to publicize the courts, most people have sought out the D.C.A.'s help would probably have learned of the Small Claims Court on their own. Moreover, its information would not reach the majority of people who are as unaware of the help that can be rendered by the Department as they are of the help available from the courts. Both the national report and a D.C.A. report on the New York City Small Claims Court²¹ make suggestions for further publicizing the existence and workings of these courts. These reports propose that the Small Claims Court advertise by public service messages in the mass media and that the availability of remedies in the court be printed on all customers' contracts or receipts for such consumer goods and services as the sale and repair of appliances and automobiles.²²

5, 1972. See also, D. CAPLOVITZ, *THE POOR PAY MORE* 175 (1963); *Reform Revisited*, *supra* note 1, at 49; *Persecution*, *supra* note 1, at 1668.

19. Interview with Philip Gassel and Howard Ruben, Staff Attorneys of the Law Enforcement Division New York City Department of Consumer Affairs, in New York City, Dec. 4, 1972.

20. *How To SUE*, *supra* note 15. The necessity of the great detail to be found in this document is an indication of the complexities and effectiveness of the procedures of these courts, a subject which will be more specifically covered later in this study. A degree of detail, however, is unquestionably necessary, and *How To SUE* was adjudged "Excellent. Best Available. . . . Well-laid out, includes subpoena[,] sample adjournment letter by mail, summons, arbitration form." NATIONAL STUDY, *supra* note 9, at 728.

21. E. SIEGEL & R. ATWOOD, *AN EVALUATION OF THE OPERATIONS AND PROCEDURES OF THE SMALL CLAIMS COURTS IN NEW YORK CITY* (Prepared for the New York City Department of Consumer Affairs) V-1 (1971) [hereinafter cited as D.C.A. REP.].

22. NATIONAL STUDY, *supra* note 9, at 44-45, 53-63; D.C.A. REP. V-14. Some advertising for Small Claims Courts in New York City has subse-

In the Harlem branch of the Manhattan Small Claims Court, paralegal assistants called "community advocates" have carried out a vigorous program of speaking engagements before community groups in the area served by this court.²³ According to Narcissus Copeland, head of the Harlem community advocates, their efforts have met with considerable success.²⁴ Although the court originally expected to handle from six to eight cases a day, it has, in fact, handled up to over a dozen a day.²⁵ This has resulted in calendar calls of up to one hundred cases on the Thursday evenings when the court is in session, much more than the thirty or so cases heard when the court first opened and before this publicity campaign went into effect.²⁶

III. Parties

On the whole, however, the public is left to find the Small Claims Court on its own initiative.²⁷ In this context it is interesting to note just what kinds of people have found their way, as plaintiffs, to the Small Claims Court. The national study charged that the "vast majority of suits, usually won by default, are now brought by corporations [and] small businesses,"²⁸ with the result that the

quently been distributed. For more specific suggestions for publicizing small claims courts, see *Persecution*, *supra* note 1, at 1669-70.

23. "With a few short newspaper articles and considerable effort to increase word-of-mouth communication, the Harlem court, which opened in mid-December, 1971, has seen its filings by non-corporate plaintiffs go from 120 cases in January 1972 to 180 cases in the first three weeks of February." NATIONAL STUDY, *supra* note 9, at 62.

24. Interview with Narcissus Copeland, Community Advocate with the New York City Department of Consumer Affairs, in New York City, Dec. 5, 1972.

25. *Id.* But see note 26, *infra*.

26. Interview with Al Bellamy, Head Clerk at Harlem Division of Manhattan Small Claims Court in New York City, Dec. 5, 1972. These figures have lowered somewhat recently due to the diminution of Model Cities funding to the Harlem Branch and other economic factors. Interview with Samuel Ingram, Clerk of the Harlem Division of the Manhattan Small Claims Court in New York City, April 1, 1974.

27. See note 22 *supra* and accompanying text.

28. *Nader Report Criticizes Small Claims Courts*, 1 CT. & CONSUMER 1 (Nov. 3, 1972) [hereinafter cited as C & C]. See also Robinson, *A Small*

“courts have become, in effect, collection agencies. . . .”²⁹ Although businesses may dominate these courts on the national level,³⁰ many jurisdictions, of which New York is one, have prohibited various types of businesses, particularly corporate entities, from appearing as plaintiffs.³¹ Section 1809 of the New York 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.³²

Although the “collection agency” aberration should not, therefore, be quite as serious in New York as elsewhere, it would still be expected that smaller unincorporated businesses, professional men, and, in general, white, better-educated, wealthier individuals would be disproportionately represented in these courts.³³ Personal observations in the Manhattan branch of the Small Claims Court have shown that while a majority of the plaintiffs were white, there were a significant number of Negro and Spanish-speaking plaintiffs as well.³⁴ Moreover, conversations with these parties indicated that most were in the courts for the first time to take care of a particular

Claims Division for Chicago's New Circuit Court, 44 CHI. B. REC. 421, 422 (1963).

29. C & C, *supra* note 28, at 1.

30. See, e.g., *Reform Revisited*, *supra* note 1, at 61. A study in California revealed that 28.5 percent of the actions were brought by corporations and 20 percent were brought by government agencies in one county. Note, *The California Small Claims Court*, 52 CALIF. L. REV. 876, 893 (1964). In Chicago 80 percent of small claims cases were for commercial collections or assigned claims. Robinson, *A Small Claims Division for Chicago's New Circuit Court*, 44 CHI. B. REC. 421, 422 (1963).

31. CAL. CIV. PRO. CODE § 117(f) (West Supp. 1974) (no assignees); TEX. REV. CIV. STAT. ANN. art. 2460a(2) (1971); WIS. STAT. ANN. § 299.06(2)(a) (Supp. 1973). See also D.C.A. REP., *supra* note 21, at III-13.

32. CCA § 1809.

33. See, e.g., *Reform Revisited*, *supra* note 1, at 61.

34. Personal observations of the author in Manhattan Small Claims Court, in New York City, Dec. 7, 1972.

problem and that they did not use the courts as a matter of course.³⁵ A more thorough survey of the Small Claims Court system in New York City conducted by the Department of Consumer Affairs showed that only about 14 percent of the plaintiffs were involved in businesses and another 21 percent in the professions.³⁶

The great majority of plaintiffs were suing as private individuals. Although the people using these courts tended to be better educated than the average New Yorker,³⁷ approximately three quarters of the plaintiffs were white and one quarter Negro or Spanish-speaking persons.³⁸ At first glance this does not appear to be a good balance; yet, it closely follows the demographic makeup of the area served by the courts.³⁹ The same report also showed that only 10 percent of the sample surveyed used these courts regularly, while approximately 40 percent had been in the court only a few times, and about one half were making use of the court for the first time.⁴⁰

The defendants in the cases studied were fairly evenly split between businesses and private individuals.⁴¹ The racial makeup of the defendants was greatly out of balance, however, with some 90 percent white and only 10 percent non-white.⁴² It is not clear what conclusion can be drawn from these figures, but they would seem to demonstrate that these courts are being used more by the poorer people as a means of obtaining redress from the business and professional community than by this latter group as a convenient collection agency.

IV. Types of Cases

A study of the small claims courts in forty-two states revealed that the most common types of disputes before these courts involve consumer goods and services;⁴³ however, these are usually not

35. *Id.*

36. D.C.A. REP., *supra* note 21, at III-13.

37. *Id.* at III-10.

38. *Id.* at III-13.

39. *Id.* at III-9-10, III-13. *See also* D. CAPLOVITZ, I DEBTORS IN DEFAULT, at 2-11 (1964).

40. D.C.A. REP., *supra* note 21, at III-10.

41. *Id.* at III-15.

42. *Id.* at III-16.

43. NATIONAL STUDY, *supra* note 9, at 141. "The most frequent claim, nearly thirty percent [of the small claims filed in one California county],

consumer-initiated suits.⁴⁴ Nationally, the other most frequent types of cases involve property damage (typically arising from minor automobile accidents), and suits against landlords (most frequently for the return of rent security deposits).⁴⁵

The case mix in New York is generally the same as that nationally. In declining order of volume, the New York Small Claims Court handles cases involving consumer services,⁴⁶ consumer goods, property damage (again, automobiles are the culprits), and landlord-tenant cases.⁴⁷ It is interesting to note that while New York does have several laws governing the deposit problem,⁴⁸ these cases do not predominate here as they do nationally.⁴⁹ Such cases are,

was for nonpayment for goods." *The California Small Claims Court*, *supra* note 30, at 884.

44. D.C.A. REP., *supra* note 21, App. 2 Table A. "In most courts, the number of cases initiated by private citizens who have sustained damages from the providers of such goods and services, or who feel wronged in commercial transactions, is microscopic both in comparison to the number of daily economic transactions in the areas served by the courts, . . . and, one might safely venture, in relation to the number of little injustices sustained by their populations." NATIONAL STUDY, *supra* note 9, at 141.

45. "[T]he theft of rent security deposits by landlords constitutes the largest single cause of consumer-initiated actions in small claims courts." NATIONAL STUDY, *supra* note 9, at 152. In fact, these latter cases involving landlords and rent deposits were so common that the study group conducting the survey charged that "'what exists now [amounts to] a widespread pattern of repeated, low-level, but cumulatively massive larceny by thousands of landlords across the country.'" C & C, *supra* note 28, at 3. Their report recommended no special procedures for handling such cases, only that more laws be passed to regulate the problem of rent security deposits since, as they note, only eight states then had any laws in this area. NATIONAL STUDY, *supra* note 9, at 663-69.

46. It is in the small claims courts that remedy may be found for the more limited wrongs for which there is no effective informal recourse in our highly structured society. *See, e.g., Ellis v. Tower Health Club, Inc.*, 73 Misc. 2d 319, 342 N.Y.S.2d 135 (Civ. Ct. 1973).

47. D.C.A. REP., *supra* note 21, at I-3.

48. N.Y. GEN. OBLIG. LAW §§ 7-101, -103, -105, -107 (McKinney 1964 & Supp. 1973).

49. The relatively low number of landlord-tenant cases in New York may be due less to their infrequency than to the large volume of general consumer claims in New York, which in turn might be a result of the fact that the City has relatively extensive and aggressive programs of pro-

nevertheless, quite numerous, and there is a special landlord-tenant section of the Small Claims Court that handles this litigation.⁵⁰

Although the Small Claims Courts are not as well publicized and commonly used as they might be, the types of parties that appear in these courts and the types of cases that they bring indicate that, if not nationally, at least in New York the Small Claims Courts are serving the purpose for which they were originally intended and are resolving many of the problem cases under consideration.⁵¹

V. Procedures

A. Jurisdiction

1. Subject matter

The basic jurisdictional restriction is a maximum dollar amount limit placed on the cases that may be brought to these courts.⁵² This amount may range as high as the \$2,000 limit allowed in New Mexico⁵³ to the \$150 maximum permitted in the District of Columbia.⁵⁴ As was noted earlier, when the New York Small Claims Court was first established this amount was set at \$50.⁵⁵ This has steadily risen to the \$500 jurisdictional limit which superseded in 1971 the pre-

consumer legislation.

50. Jud. R. N.Y.C.R.R. § 2900.35.

51. The ready access to the courts provided by the small claims procedure does, however, open up the possibility of the use of these courts for harassment. This problem was foreseen by the legislature which provided, "If the clerk shall find that the procedures of the small claims part are sought to be utilized by a claimant for purposes of oppression or harassment . . . the clerk may in his discretion compel the claimant to make application to the court for leave to prosecute the claim in the small claims part. The court upon such application . . . may make an order denying the claimant the use of the small claims part to prosecute the claim." CCA § 1810 (McKinney 1963). We may note such misuse of the Small Claims Court in *Menon v. Weil*, 66 Misc. 2d 114, 320 N.Y.S.2d 405 (Civ. Ct. 1971) and *People v. Budner*, 15 N.Y.2d 253, 206 N.E.2d 171, 258 N.Y.S.2d 73 (1965). In the latter case, defendant, although a litigant, was convicted of common barratry under §§ 320-23 of the former Penal Law.

52. See *Reform Revisited*, *supra* note 1, at 59.

53. N.M. STAT. ANN. § 16-5-1 (1953).

54. D.C. CODE ENCYCL. ANN. § 11-1341 (1966).

55. Law of May 15, 1934, ch. 598, § 179 [1934] N.Y. Laws 1291.

vious limit of \$300.⁵⁶ Much of this increase over the years has simply been due to inflation; although part of it, particularly this latest \$200 increase, represents an effort to increase the types and relative size of the cases the court might handle.⁵⁷ Even this \$500 limit, however, does not cover the great number of cases that very frequently are not economical to litigate in the regular Civil Court. It might be argued, however, that the informal procedures of the Small Claims Court do not provide sufficient safeguards to guarantee the degree of fairness that the parties to the litigation would demand when such significantly larger sums of money are involved. Yet, without any recourse to the judicial system in these cases, there can be no fairness at all. Consequently, the Small Claims Study Group has recommended that the jurisdictional limit for consumer claims be raised as high as \$3,000 with automatic increases tied to various economic indicators to prevent the erosion of this jurisdictional amount through the effects of inflation.⁵⁸

This new \$500 limit in New York includes not only the claim itself, but all expenses incurred.⁵⁹ It may also involve a claim against a party on a cause of action worth over \$500 as long as the final claim is not for more than the limit.⁶⁰ It is not possible, however, to "split" a claim and sue, for instance, two people in one action for a claim totalling \$1000 by suing each for \$500.⁶¹ Although the claim may not exceed \$500, the award can go as high as \$1,500, since the judge has the discretion to award treble damages in certain cases,⁶² an occurrence that is not frequent, but one that has been witnessed on more than one occasion by Mrs. Copeland in her years of work in the Harlem branch of the Small Claims Court.⁶³

The court is limited not only by the \$500 limit on its subject

56. CCA § 1804.

57. The correlation is by no means exact, for the legislature intended that the subject matter jurisdiction be expanded. See Memorandum of the State Executive Department, [1971] Sess. Laws of N.Y., 2438 (McKinney 1971).

58. C & C, *supra* note 28, at 3.

59. CCA § 1801.

60. How To SUE, *supra* note 15, at 6.

61. Ruthen v. R. Block, Inc., 163 N.Y.L.J. 2 (March 24, 1970).

62. See, e.g., N.Y.C. ADMIN. CODE § Y 51-11.0 d.(2)(1971).

63. Interview with Narcissus Copeland, *supra* note 24.

matter jurisdiction,⁶⁴ but also by the type of remedy that it is authorized to grant.⁶⁵ Since the court can only provide money judgments and cannot order specific enforcement,⁶⁶ many small cases might go unlitigated and unresolved since an appropriate remedy might not be available in the Small Claims Court.⁶⁷ The reasoning behind this rule should perhaps be re-examined with an eye to removing this restriction from a court that should be making an effort to hear more of the disputes that fall within this problem case category.

2. Personal

a. Plaintiffs

Limitations have also been placed on the litigants who may appear in the Small Claims Court. The most significant restriction is a prohibition against corporate plaintiffs. In addition, the New York law requires that a plaintiff must be at least twenty-one years of age, or must be accompanied by a parent or guardian both when the claim is filed and when the case is tried.⁶⁸ The Small Claims Study Group argues that since eighteen has been established as the "age of responsibility" for most purposes (voting, the draft, etc.), those between eighteen and twenty-one years of age should be considered responsible enough to make use of the courts on their own. This is a particularly persuasive argument since these individuals have such great economic power and consequent interest in and need for remedies for their consumer problems.⁶⁹

64. CCA § 1801.

65. Generally, small claims courts can grant only money judgments. See, e.g., CCA § 1801; CAL. CIV. PRO. CODE § 117 (West 1954). See Comment, *The Establishment of Small Claims Courts in Nebraska*, 46 NEB. L. REV. 152, 155 (1967).

66. See note 65 *supra*.

67. For example, a Small Claims Court would not be empowered to order a home improvement contractor to finish a job or to do repair work necessitated by faulty work, nor would it be able to order a store to deliver items or replace faulty goods.

68. N.Y.C.P.L.R. § 321 (McKinney 1972); CCA § 1809; How To SUE, *supra* note 15, at 6. See Wright, *The Courts Have Failed the Poor*, N.Y. Times, Mar. 9, 1969, § 6 (Magazine), at 26.

69. NATIONAL STUDY, *supra* note 9, at 25.

b. Defendants

Corporations may be named as defendants under the New York law. The Small Claims Court, however, has jurisdiction only over individuals and businesses that either live, work, or have an office within the New York City limits.⁷⁰ While there might be some question as to exactly what constitutes "working" or "having an office" in New York City, it does not appear that the courts have had any particular trouble construing these restrictions.

c. Attorneys

Many jurisdictions prohibit lawyers in courts,⁷¹ perhaps believing that they do more to obstruct than facilitate the proceedings,⁷² perhaps to assure that the party with more money and the ability to hire a lawyer would not have an insurmountable advantage,⁷³ or perhaps to make it easier and cheaper for parties who might otherwise have hired a lawyer when it was not really necessary or economically advised.⁷⁴

70. *How To SUE*, *supra* note 15, at 6. Personal jurisdiction is determined under the provisions of the CCA. Thus a corporation has a residence for jurisdictional purposes wherever it is established by law or wherever it transacts its general business or keeps an office or has an agency. CCA § 305 (McKinney 1963). *See Ratner v. Hudson Transit Lines, Inc.*, 234 N.Y.S.2d 311 (Civ. Ct. 1962).

71. CAL. CIV. PRO. CODE § 117g (West Supp. 1974); *Prudential Ins. Co. v. Small Claims Ct.*, 76 Cal. App. 2d 379, 173 P.2d 38 (1946); COLO. REV. STAT. ANN. § 127-1-5(2) (1964); WASH. REV. CODE ANN. § 12.40.080 (1962).

72. *Reform Revisited*, *supra* note 1, at 65.

73. "If [the ghetto resident] . . . appears without counsel, he may be subject to persuasion by opposing counsel or an aggressive business litigant. A pre-trial settlement, the terms of which are unfair to the individual litigant, may result." *Id.* at 49. *See also id.* at 65. A further suggestion for limiting the use of attorneys notes that "a fee schedule keeping allowable costs very low might discourage the use of attorneys by business claimants with enough sophistication to present their own case, while making representation by counsel possible for those meeting the income requirements for free services." *Persecution*, *supra* note 1, at 1680. This suggestion has been followed in some jurisdictions. WIS. STAT. ANN. § 299.25(10) (Supp. 1973); Gen. Sess. R. 24 (3 D.C. CODE ENCYCL. ANN. 1966).

74. It has been noted that prohibiting attorneys "comports with a purpose to encourage use of a judicial forum by those lacking the means to employ a lawyer. Otherwise, the right to file a claim in court might be seen

The New York laws, however, do permit lawyers in the Small Claims Court and, in the case of corporate defendants, even require them.⁷⁵ Personal observations in these courts have verified that cases in which lawyers were involved proceeded at a much slower pace than *pro se* litigation. Judges constantly reprimanded the lawyers and asked them to stop interrupting with technical objections to evidence and testimony despite the fact that the judge had repeatedly reminded the attorneys that the rules of evidence were greatly relaxed in these proceedings. When interviewed, the lawyers themselves admitted being a bit chagrined over these constant reprimands, but indicated that the habits of normal litigation were hard to break. The lawyers felt they were earning their fees by the attention they paid to the presentation of their opponent's case and by their alert objections which served to inhibit that presentation. Other attorneys were annoyed at having to appear in courts where they felt rather helpless and of little assistance to their clients.

With respect to the possible advantage a lawyer might provide a client in these courts, many of the lawyers felt that they not only could be of limited use, but that they often hurt their client's cause by annoying the judges, who in reaction to these constant irritations, bent over backwards to assist parties not represented by counsel.⁷⁶

Looking at the only statistics provided by the D.C.A. report that might be useful in evaluating the effectiveness of the lawyers, it appears at first that plaintiffs obtained much smaller judgments from defendants with lawyers as opposed to those without.⁷⁷ Yet, since defaults greatly swell the average of this latter category,⁷⁸ the

as no great advantage by the individual plaintiff. . . . [P]rocedure may tend to respond to the needs of the lawyers rather than the litigants. . . ." Eovaldi & Gestrin, *Justice for Consumers: The Mechanisms of Redress*, 66 Nw. U.L. REV. 281, 295 (1971) (footnote omitted). See also Robinson, *supra* note 5, at 425.

75. N.Y.C.P.L.R. § 321 (McKinney 1972).

76. See note 72 *supra* and accompanying text.

77. D.C.A. REP., *supra* note 21, at III-40.

78. *Id.* In suits on commercial contracts the poor defendants have need of an attorney to point out defenses. The fact that attorneys are not allowed in small claims court is seen as a real advantage by the claimant who wishes to avoid careful scrutiny of his actions. *Persecution*, *supra* note 1, at 1661-67, 1675-79. In the period July 1, 1971 through June 30, 1972,

figures are unreliable. In fact, when defaults are removed, the statistical advantage disappears and attorneys seem to be of no special help to plaintiffs or defendants.⁷⁹

The observations noted plus the well-known high costs of litigation bear out the admonition of Professor Maurice Rosenberg that rules excluding lawyers are often necessary to protect "small claimants from their own attorneys, some of whom measure their responsibilities to a case by the sum involved."⁸⁰ Both Judge Edward Thompson, Administrative Judge of the New York City Civil Court, and Judge Maurice Wahl have stated that the New York Small Claims Court was becoming "contaminated" by the too frequent introduction of lawyers into the proceedings.⁸¹ Although the implication is that more and more lawyers have been coming into these courts over the years, the Judicial Conference Reports of 1969-71 show that the figure for representation by lawyers has held fairly steadily between 10 percent and 15 percent of all cases.⁸²

The actual direction that the courts are taking, however, is toward the introduction of more professionals into the small claims system. In the newest court established in Harlem, the D.C.A. provided four "community advocates" or paralegal assistants to help parties unsophisticated in the law prepare their cases.⁸³ The national study group felt that the results of this experiment were sufficiently encouraging to warrant a recommendation that such professional or semi-professional help be used in all such courts.⁸⁴

total claims totalled 61,705. 10,361 claims were defended by attorneys. We may, therefore, assume that no attorney was used by the defendant in 51,344 claims. Default inquests totalled 11,378 in the period, more than a fifth of the cases which were not defended by attorneys. 1973 N.Y. JUDICIAL CONFERENCE REP. A-97.

79. D.C.A. REP., *supra* note 21, at III-39-41.

80. Rosenberg & Schubert, *Trial by Lawyer: Compulsory Arbitration of Small Claims in Pennsylvania*, 74 HARV. L. REV. 448, 469 (1961).

81. *Lieberman v. American Lumbermans Mut. Cas. Co.*, 120 N.Y.S.2d 43, 48 (N.Y.C. Mun. Ct. 1953).

82. 1969 N.Y. JUDICIAL CONFERENCE REP. A-141; 1970 N.Y. JUDICIAL CONFERENCE REP. A-163; 1970 N.Y. JUDICIAL CONFERENCE REP. A-85.

83. See note 23 *supra* and accompanying text.

84. See discussion of the lay advocate in *Persecution*, *supra* note 1, at 1682-83.

B. Filing the Claim

With one exception, filing a small claim is a relatively easy and inexpensive process. A claim must be filed during business hours (9:00 A.M. to 5:00 P.M., Monday through Friday) at the branch of the Small Claims Court where the claimant intends to bring suit.⁸⁵ There is an obvious inconvenience here for individuals who must work during those hours; however, this hardship is eased somewhat by the fact that the plaintiff need not file the claim personally, but may have someone else, such as a friend or family member, do it for him.⁸⁶

The actual filing procedures are simple and cheap. The claimant need only make out a single form, filling in his own name and address, the amount sued for, the reason for the suit, and the *exact legal* name and address of the party being sued.⁸⁷ This latter provision is the one "exception" that seems unusually onerous. If the plaintiff makes a mistake in specifying the name of the defendant, the case can be dismissed on this technicality even though he has sufficiently identified him for all practical purposes. The plaintiff would lose his filing fee and have to try again by filing a new claim and paying another fee. Although there is an obvious need for accuracy here, the rule seems to be an unnecessary return to the days of *Gibbons v. Pepper*⁸⁸ and the strict adherence to the rules of pleading. Demands for precision in such technicalities are particularly incongruous in the informal setting of the Small Claims Court.⁸⁹ It

85. How To SUE, *supra* note 15, at 8.

86. Jud. R. N.Y.C.R.R. § 2900.33(a)(1), CCA § 1803 (McKinney 1963).

87. How To SUE, *supra* note 15, at 9.

88. *Gibbons v. Pepper*, 91 Eng. Rep. 922 (K.B. 1695).

89. It seems that the joinder of plaintiffs is not so strict. For example, in *Buonomo v. Stalker*, 40 App. Div. 2d 733, 336 N.Y.S.2d 687 (3d Dep't 1972), a mother sued on an injury inflicted on her son by a playmate. The Small Claims Court granted her judgment in the amount of \$300 for both pain and suffering and medical bills. Appellant complained that the cause of action for pain and suffering was really that of her son. Since the son had not been joined, appellant feared that he could get a second judgment entered once he gained majority. The Appellate Division, noting section 1804 of the Uniform City Court Act, asserted that "the trial court must be given wide latitude and discretion in the conduct of the proceedings." *Id.* at 733, 336 N.Y.S.2d at 689. It simply remanded the case, ordering that the judgment be apportioned and then entered for respondent and her son.

is, perhaps, unnecessary to get too exercised over this issue, since it does not appear that the technicality is often raised.

The fee itself is set by statute⁹⁰ at \$2.00 for the cost of filing plus the cost of serving the summons by registered mail, \$1.20 at present, for a total of \$3.20. This seems a reasonable amount and one about which few complaints could be made.

Notice to the defendant, the final procedural step connected with the filing of the claim, is often a source of some confusion to potential plaintiffs. As indicated above, the first attempt at service is usually made by registered mail.⁹¹ If the summons is returned as undeliverable (which occurred between one-quarter and one-third of the time in 1970-71⁹² and 1971-72⁹³), the plaintiff is sent the summons and blank affidavits of service. He must then personally serve the defendant. Service of process can be accomplished by a friend or by a professional process server, although the latter can involve a sizeable expense.⁹⁴ Inability to serve the defendant is often a problem in small cases which so frequently involve suits against hard-to-locate individuals and fly-by-night companies. Although this is a common problem, there is little that has or can be done in the way of procedural reform.

Another possible problem for plaintiffs involves the right of defendants to counterclaim.⁹⁵ A fairly normal event in the course of litigation, the counterclaim takes on an interesting strategic dimension in the Small Claims Court. If the counterclaim exceeds \$500, the case is removed to the regular Civil Court.⁹⁶ This clearly provides an opportunity for a defendant with greater resources to put the plaintiff at a disadvantage by making him continue his case in the complicated and expensive procedures of the regular Civil

90. CCA § 1803.

91. If defendant is at the specific address, however, a refusal to accept the summons will often prove harmful. See *Lewandowski v. Goldberg*, 27 Misc. 2d 941, 213 N.Y.S.2d 557 (County Ct. 1961); *Negron v. Cooper*, 75 Misc. 2d 347, 347 N.Y.S.2d 980 (City Ct., 1973); N.Y.C. CIV. CT. RULE § 2900.33(a)(3).

92. 1972 N.Y. JUDICIAL CONFERENCE REP. A-97.

93. *Id.*

94. *How To SUE*, *supra* note 15, at 11-13.

95. Jud. R. N.Y.C.R.R. § 2900.33(c).

96. *Id.* § 2900.33(d)(4).

Court which he had sought to avoid in the first place.⁹⁷ The infrequent use of this stratagem may be the result of the unfamiliarity of defendants with its possibilities; more likely, however, it is the result of the difficulty of finding grounds for a counterclaim for more than \$500 in such a case. One exception might be on larger consumer contracts where the plaintiff has stopped payment because of his complaint about the services or goods that prompted his small claims suit. For example, when a consumer pays \$200 on a \$900 sales contract, and then stops payment and sues for the return of his money, his claim is within the \$500 limit of the Small Claims Court, but the seller-defendant is left with the opportunity to counterclaim for the accelerated payment of the \$700 remaining on the contract, thus removing the case to the regular Civil Court. Apparently, however, this "loophole" has not been abused. Fewer than one percent of the cases filed were transferred to the regular Civil Court.⁹⁸

C. The Trial

Trials in the New York Small Claims Court are held on weekdays nights, so that parties who have jobs during the day will not have to miss work to appear in court.⁹⁹ This, of course, is a feature of almost all small claims courts in the different states.¹⁰⁰

According to the D.C.A. report, half the cases filed never reach the court.¹⁰¹ With respect to the remaining fifty percent, the Small

97. When this tactic was mentioned to attorneys in the court, they all brightened noticeably as the potential of this maneuver became clear to them, but none admitted to ever having witnessed its use in these courts. It must be noted, however, that a small claims decision dismissing a counterclaim will have res judicata effect as to the cause of action. *Supreme Burglar Alarm Corp. v. Mason*, 204 Misc. 185, 122 N.Y.S.2d 398 (1st Dep't 1953).

98. 1972 N.Y. JUDICIAL CONFERENCE REP. A-97.

99. HOW TO SUE, *supra* note 15, at 14. If night sessions were not the rule, it has been estimated that no case would be settled for less than a day's wages plus counsel fees (if any) and a nuisance factor. *Reform Revisited*, *supra* note 1, at 57.

100. *Reform Revisited*, *supra* note 1, at 57.

101. D.C.A. REP., *supra* note 21, at III-27. This is verified by the 1970-71 Judicial Conference statistics which show that of 55,413 claims filed, 7,067 cases (13%) were reported to the court as settled before hearing;

Claims Court starts off as does any other Civil Court in New York City with a long, boring, noisy, confusing calendar call. Preceding the calendar call, however, the court announces that the parties may opt to go before arbitrators rather than the judge. They are told that they will have to wait longer for the judge, but that if they select an arbitrator, they lose their right to appeal. They are also told that they can have a Spanish interpreter if they need one. Many of the parties arrive a little late, however, and miss these announcements. In practice this results in a great deal of confusion although the clerks try to clear up these minor misunderstandings by surprisingly patient replies to an endless series of the same few questions.

The first important decision facing litigants is whether to go before an arbitrator, a judge,¹⁰² or a jury. Jury trials are discouraged by the imposition of additional procedural requirements and are seldom requested.¹⁰³ If either party requests it, the case will be heard

17,246 cases (31%) were dismissed when neither party appeared (many of these, no doubt, because the case was settled out of court though the parties neglected to report this to the clerk); and another 3,486 cases (6%) were dismissed when the plaintiff failed to appear. Of the cases which do reach the court, 2,195 cases (4%) were settled during the trial and some 10,392 cases (20%) were handled as "inquests" in which the defendant did not appear, resulting in a default judgment. Although the court disposes of these cases in a fashion, not much adjudication occurs. This leaves, finally, 12,681 cases (23%) which actually go to trial, generally three to four weeks after the original filing. 1972 N.Y. JUDICIAL CONFERENCE REP. A-97.

102. "[T]he judges are usually rotated, and the quality of judicial manpower is no worse than in the regular civil courts." *Reform Revisited*, *supra* note 1, at 55 (footnote omitted).

103. A party requesting a jury trial must file a formal request for a jury at least a day before the trial, pay a jury fee of \$12.50, and deposit \$50 in the court to cover any costs that might be awarded against the party. CCA § 1806. The issue of costs in a jury action is a bit confusing. Under section 1806 of the statute, defendants requesting a jury must deposit a fee plus the fifty dollar deposit specified *supra*. Under the same section, however, costs are limited to \$25.00, which has been judged to be the exclusive award for costs. *Dolin v. Eck*, 61 Misc. 2d 549, 306 N.Y.S. 2d 569 (City Ct. 1970). It seems, therefore, that the sole purpose for the fifty dollar deposit is a deterrent to demands for juries. In 1970-71, only 32 jury demands were made, a very insignificant minority of the total small claims made in that year. 1972 N.Y. JUDICIAL CONFERENCE REP. A-97. *See also*, *Reform Revisited*, *supra* note 1, at 56-57.

by a judge,¹⁰⁴ but, as the parties are warned, this will take more time than arbitration since these hearings must wait until the entire calendar call is completed and since there is only one judge to hear all cases in a particular evening.

Parties are also told that by choosing a judge they reserve their right to appeal.¹⁰⁵ It is not always made clear to them, however, that this right is actually a very limited one¹⁰⁶ and probably not worth a great deal. There is a very high standard for an appeal from the Small Claims Court. The statutes provide that litigants in these courts "have waived all right to appeal,"¹⁰⁷ but then make an exception for cases in which it can be demonstrated that "substantial justice has not been done between the parties according to the rules and principles of substantive law."¹⁰⁸ The D.C.A. booklet "How to Sue in Small Claims Court" interprets this to mean that appeal is possible "only if there is *no* possibility the judge was right."¹⁰⁹ Of all the claims instituted in 1970-71 only a miniscule fraction (74 of 55,413) were appealed.¹¹⁰ No figures were available, however, on the success rate of the appeals.¹¹¹

The D.C.A. booklet also points out that if an appeal is made all the advantages of the Small Claims Court are lost since the appeals are expensive, time consuming, and almost always require a lawyer.¹¹² Hence, if it was not feasible to litigate the case in the regular courts in the first place, the parties would probably not wish to appeal, even if the court would allow them to do so. The right to appeal that is reserved when the parties go before a judge is, therefore, a rather empty one and perhaps is given unwarranted importance in the decision of some parties to appear before the judge instead of an arbitrator.

104. HOW TO SUE, *supra* note 15, at 14. See also, Jud. R. N.Y.C.R.R. § 2900.33(a).

105. HOW TO SUE, *supra* note 15, at 14.

106. Personal observations of the author in Manhattan Small Claims Court in New York City, Dec. 7, 1972.

107. CCA § 1807 (McKinney 1963).

108. *Id.*

109. HOW TO SUE, *supra* note 15, at 14-15.

110. 1972 N.Y. JUDICIAL CONFERENCE REP. A-97.

111. Considering the strict standard for even allowing appeals, it seems that any appeal allowed would almost necessarily have to be successful.

112. HOW TO SUE, *supra* note 15, at 14.

There are other differences between cases handled by the judge and those handled by the arbitrators, but they are of such a nature that they cannot be announced in the courtroom for the benefit of the assembled litigants. Lawyers interviewed who have experience with the Small Claims Court stated that the judges tended to decide the cases according to legal principles and the demands of the substantive law involved.¹¹³ Arbitrators, on the other hand, seemed more prone to the use of negotiation and bargaining to obtain a compromise settlement.

Figures gathered by the D.C.A. tend to support this informal opinion. The D.C.A. found that judges awarded full claims in half their cases.¹¹⁴ The Study Group attributed this relatively high figure to the fact that once the judge decides who is in the legal right, he then tends to give that party what he asked for with less of an inclination toward reaching a compromise between the two parties.¹¹⁵

The D.C.A. figures showed that arbitrators gave the plaintiffs the full amount of their claims in only thirty percent of the cases, much less often than did the judges.¹¹⁶ As indicated above, lawyers felt that arbitrators entered the cases more with an eye to settling the

113. Such an approach may be found in *Greenfield v. Thaler*, 52 Misc. 2d 869, 276 N.Y.S.2d 646 (Civ. Ct. 1967). In this case the plaintiff sued on a separation agreement, but was only able to introduce defendant's affidavit as to the terms thereof. The court noted the provision of section 1804 which mandates that "The court . . . shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence" CCA § 1804. It clung to the old devices, however, in declaring, "[i]n default of greater diligence on the part of plaintiff in the direction of producing a copy of the agreement or broader secondary evidence in the event of its unavailability, it would be premature for the court to cast the best evidence rule to the winds in reliance on section 1804 of the New York City Civil Court Act." 52 Misc. 2d at 872, 276 N.Y.S.2d, at 649.

114. D.C.A. REP., *supra* note 21, at III-36-37.

115. NATIONAL STUDY, *supra* note 9, at 93. This is not to say, of course, that the judges were inflexible in their approaches to these cases nor that they ignored the equities of each case since some compromise is apparently reached in the other half of the cases. The only thing that makes the 50-50 split at all significant is the very general trend that it shows when compared to similar figures for the arbitrators.

116. D.C.A. REP., *supra* note 21, at III-37.

dispute in the manner that would be most acceptable to both parties and with a greater interest in compromise than in deciding the legal issues.¹¹⁷ It has also been noted that the judges tend to find for the defendants slightly more often than do the arbitrators; however, the statistical differences are so inconsequential as to preclude any well-founded conclusions as to their significance.¹¹⁸

In proceedings with judges, a reporter is provided. Since the right to appeal is reserved, a record must be made.¹¹⁹ The proceedings are not unlike a small Civil Court trial with the exception that the judge participates a great deal more and takes a more active role in questioning the parties to bring out the facts that he feels he needs.¹²⁰ The judge will, on his own initiative, provide the parties with a Spanish interpreter when he feels one would be helpful, even, at times, in spite of the absence of a request for one by a litigant.

The proceedings before the arbitrators are slightly less formal than those before a judge. Since appeals are not allowed, no record of the proceedings is needed. The proceedings begin with an oral repetition of the calendar call warning that there is no appeal on cases heard before an arbitrator. The parties also sign arbitration cards which state that they understand the nature of arbitration and agree to waive their right to appeal.¹²²

The arbitrators themselves are attorneys who have volunteered

117. *Id.* at III-32-38.

118. *Id.* at III-37-38.

119. CCA § 1802 (McKinney 1963).

120. Eovaldi & Gestrin, *Justice for Consumers: The Mechanisms of Redress*, 66 Nw. U.L. REV. 281, 295 (1971).

121. How To SUE, *supra* note 15, at 9.

122. In spite of all these warnings, Professor Philip G. Schrag of the Columbia Law School stated that he knew of a case in which a poorly educated Spanish-speaking woman sought to have her arbitrated case reopened, with the help of a Legal Aid attorney, claiming that the warning had not been made clear to her. A judge at the Small Claims Court said that such misunderstandings were highly unlikely, that he had never encountered this before and that the misunderstanding was probably due less to any fault of the court's procedures and explanations than to the woman's inability to understand even what "right to appeal" meant. He admitted that many parties might agree that they understood the significance of all this when they really did not, but declared that there was little the court could do that was not already being done to help such parties.

for this service or have been "volunteered" by Judge Thompson.¹²³ Each has had a great deal of experience in this area, over ten years on the average.¹²⁴ Lawyers who have worked with these arbitrators stated that few of the parties who submit their cases to arbitration come away completely happy. They indicated, however, that this was due to the nature of the arbitration process itself and did not at all reflect on the competence of the arbitrators whose skills they felt ranged from at least adequate to excellent.¹²⁵

E. Judgments

There is, however, a final snag in these small problem cases even after a plaintiff has succeeded in obtaining a decision in his favor, namely that of collecting his judgment. As might be expected, cases of this type frequently involve marginal, fly-by-night businesses that will not pay judgments without considerable prodding from the authorities. The national study of the small claims courts indicated that landlords¹²⁶ and corporate defendants such as towing companies and taxi companies frequently sought to evade the payment of judgments.¹²⁷ Also, many of the defendants in these cases are individuals from whom it is frequently much more difficult than business entities to collect a judgment. A winning plaintiff in the Small Claims Court must locate the defendant from whom he wishes to collect the judgment, locate his assets, if necessary, and, finally, bring pressure against the defendant to part with the amount of the judgment.¹²⁸

Since successful claimants cannot do all of this by themselves, they have to turn to a sheriff or marshal for help.¹²⁹ Both have the

123. D.C.A. REP., *supra* note 21, at III-32.

124. *Id.*

125. Interviews with various participants in proceedings in small claims court, Manhattan Branch, Dec. 7, 1972.

126. NATIONAL STUDY, *supra* note 9, at 161.

127. C & C, *supra* note 28, at 3.

128. HOW TO SUE, *supra* note 15, at 18-19.

129. To collect the award, the judgment creditor must have the court execute on the judgment pursuant to N.Y.C.P.L.R. § 5230 (McKinney 1963). Usually in a small claims matter the sheriff or marshal will take care of this. HOW TO SUE, *supra* note 15, at 18. The marshal (CCA § 1609 (McKinney 1963)) and sheriff have the authority to levy on the execution upon the personal property of the judgment debtor. CCA § 1504 (McKin-

power to attach property and garnish wages,¹³⁰ but in reality they are not always that useful to the successful small claimant. Because of the demands on their time and the economies of their professions both the sheriffs and marshals require that the plaintiff do all of the investigatory legwork such as locating the defendant and/or his assets. Obviously, if the claim was small enough to use the Small Claims Court, a plaintiff could not afford to hire a detective or spend a great deal of his own time on these matters if the defendant were determined to avoid paying a judgment.

Even if the defendant and his assets can be located, the plaintiff would still encounter troubles if he turned to a marshal to exert pressure on the defendant to pay the judgment. A survey by the D.C.A. revealed that many marshals were charging illegal fees, and retaining fees that were to be returned to plaintiffs.¹³¹ This survey indicated that the biggest problem was to persuade a marshal to accept the job of collecting a small claims judgment, or, if he accepted it, to collect it within a reasonable amount of time.¹³²

Like the sheriffs, the marshals are under a duty to collect judgments for successful claimants when they are so requested,¹³³ upon the payment of the necessary fees by the claimant.¹³⁴ The difficulty is that the marshals are paid on a percentage fee system, receiving a certain percentage of all the claims that they collect.¹³⁵ Under this system, small claims usually cost more to collect than the marshals will receive in payment. As a result, many marshals refuse to work on such claims and do everything they can to discourage plaintiffs from availing themselves of the marshals' services.¹³⁶ If a marshal does accept the job, it will have a low priority. Thus, there are often long delays of several months due to the large backlogs of such cases

ney 1963). For executions levied against real property see CCA § 1505.

130. CCA § 1504 (McKinney 1963) (sheriff's power to levy on personal property); N.Y. C.P.L.R. § 5231(d) (McKinney 1963) (power to garnish wages). Marshals have "the powers, duties and liabilities of sheriffs . . . in respect to the taking and restitution of property. . . ." CCA § 1609 (McKinney 1963).

131. D.C.A. REP., *supra* note 21, at IV-9-11, -23-24.

132. *Id.*, at IV-11-16, -26-27.

133. CCA § 1609 (McKinney 1963).

134. *Id.* § 1915.

135. D.C.A. REP., *supra* note 21, at IV-2-3.

136. *Id.*, at IV-11-15.

that develop in each marshal's office.¹³⁷ If the judgment is a particularly difficult one to collect, moreover, the marshal will often not want to take the time for the all-out effort the job would require; thus the case will lie dormant in the marshal's files or he will simply report that he is unable to collect it.

The outlook is a little brighter if the successful small claimant turns to the sheriff in his borough. The sheriffs are civil servants who do not have to rely on the percentage fee system for their income¹³⁸ and consequently are able and willing to give judgments on small claims whatever attention they need. A D.C.A. survey revealed that the sheriffs' offices tended to be much more helpful than did those of the marshals and that there was a delay of only a few weeks in the collection of judgments.¹³⁹ When the judgments were collected, the sheriffs also promptly refunded the full collection fee as the law requires.¹⁴⁰ As a result of these surveys, the D.C.A. booklet for parties in the Small Claims Court recommends that they turn to sheriffs for help in collecting judgments and discourages the use of the marshals.¹⁴¹

It has also been recommended that to clear up some of the problems in locating defendants and their assets after a judgment has been entered, defendants should be required to fill out an "appearance sheet" which would give such information as the defendant's home address, and employer's name and address.¹⁴² Although this might be helpful, the proposal has never been acted upon by the courts.

VI. Conclusion

The New York Small Claims Court provides an efficient and economical way for the consumer to obtain redress for small claims. The court's streamlined procedure permits the layman to inexpen-

137. *Id.*

138. N.Y.C. ADMIN. CODE § 1032 - 4.0 (1971). Sheriffs receive salaries and any fees they receive belong to the City of New York. *Id.* at § 1032 - 7.0. All money collected by the sheriff is paid to the party or parties directed to be paid. *Id.*

139. D.C.A. REP., *supra* note 21, at IV-5-7.

140. *Id.* at IV-5.

141. HOW TO SUE, *supra* note 15, at 18-19.

142. D.C.A. REP., *supra* note 21, at IV-24-29.

sively litigate his case in a comparatively hospitable environment without the assistance of an attorney.

The court has not, however, lived up to its original goal as a court of readily available redress in that it has been unduly limited in the scope of its jurisdiction and powers, and has not received sufficient recognition as a tool for justice by the community as a whole. Moreover, successful litigants are often faced with inordinate difficulties in collecting judgments once they are obtained. It is easily seen, therefore, that in order for the Small Claims Court to be thoroughly effective, the limitations imposed by statute and the shortcomings inherent in its procedures and in other areas of the judicial system should be carefully scrutinized and adjusted by the legislature and the court itself wherever it is feasible to do so.