JUSTICE COURTS - Plaintiff , except infants, in a Justice Court cannot conduct his suit by an agent but may do so in person br by an attorney.

October 16, 1941

Hon. Max Librach
Member of the House of Representatives
Sixty-First General Assembly
418 Olive Street
St. Louis, Missouri

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Dear Sir:

We are in receipt of your letter of September 20, wherein you request an opinion from this Department, upon the following statement of facts:

> "I would appreciate receiving from you an opinion with respect to House Bill 270 which was passed and approved by the Governor at the recent session of the Legislature. House Bill 270 deletes the word 'agent' from Section 2593 of the 1939 Missouri Statutes. Also, Section 2595 eliminates the word 'agent'. However, Section 2596 has not been changed and the said section of the Statute permits an agent to defend a suit in a Justice Court. Also, Section 2603 permits an agent to have a suit continued.
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> "Because of this situation, it has become difficult to give an accurate interpretation of the law, that is to say, it is difficult as to whether or not the intent of all the sections of the Statutes mentioned mean that no agents are to practice in Justice Courts for any purpose whatsoever, or that they still might be permitted to defend suits as well as continue suits.

> "I would appreciate your opinion as to the extent to which an agent may participate in justice court procedure, if at all."

Section 2593, as it appears in the Revised Statutes of Missouri, 1939, reads as follows:

> "Any plaintiff, except infants, may appear and conduct his suit either in person or by agent or attorney."

This Section was amended in Laws of Missouri, 1941, at page 414, by striking out the words "agent" and "or", so that this Section ow reads as follows:

> "Any plaintiff, except infants, may appear and conduct his suit either in person or by attorney."

In the case of Crescent Furniture Co. v. Raddatz, 28 Mo. App. 210, the Court construed Section 2593 in the form as it appears in the Revised Statutes of Missouri, 1939, and also Section 2596 R. S. Missouri, 1939, which latter Section reads as follows:

> "Every defendant in any suit, except infants, may appear and defend the same, in person or by agent or attorney."

In this case the Court had this to say at l. c. 213:

> "* * * A person can prosecute or defend in our courts either in person or by attorney, and in justices' courts he can do it by an agent who is not an attorney. Rev. Stat., sects. 2905, 2908, 2911. But where, in justices' courts, he prosecutes by agent, the proceeding must run in the name of the principal, just as in a court of record. The statute merely enables an agent, who is not an attorney, to conduct for his principal a proceeding just as he would do it if he were an attorney. * * * * * * * "

It will be noted from the reading of the new Section 2593, supra, that this Section has to do with any plaintiff, whereas, Section 2596, supra, has to do with every defendant. Therefore, it would seem that the legislature through the enactment of each of these Sections was endeavoring to fix the rights of both plaintiff and defendant in a suit before a Justice Court.

So, in construing these two Sections as they now appear in our laws, we turn to the cases as a guide for construction of statutes and in this connection we call attention to 36 Cyc. of Law and Pr. 1149, which reads as follows:

> "So far as reasonably possible the several statutes although seemingly in conflict with each other, should be harmonized, and force and effect given to each, as it will not be presumed that the Legislature, in the enactment of a subsequent statute, intended to repeal an earlier one, unless it has done so in express terms, nor will it be presumed that the Legislature intended to leave on the statute books two contradictory statements."

In the case of State ex rel. Buchanan County v. Imel, 146 S. W. 783, 242 Mo. 293, the Court said:

> "* * * One of the established rules for construing statutes is to examine closely the context of the act where the words to be construed occur, and thereby ascertain what meaning they were intended to convey. (Riggs v. Railroad, 120 Mo. App. 335, l. c. 340; State v. Snyder, 182 Mo. 462, l. c. 500; 82 S. W. 12)".

In the case of State ex rel. and to Use of Jamison v. St. Louis-San Francisco Ry. Co., 300 S. W. 274, 318 Mo. 285, l. c. 290, the Court said:

> "A construction should never be given a statute or a constitutional provision which would work such confusion and mischief unless no other reasonable construction is possible. * * * "

In the case of State ex rel. McAllister v. Dunn, 209 S. W. 110, l. c. 112, 277 Mo. 38, the Court makes the following statement in dicsussing the construction of a statute:

> "It is a well-settled rule that the Legislature is not to be held to have done a vain and useless thing."

In the case of Louisiana Purchase Exposition v. Schnurmacher, 132 S. W. 326, l. c. 327, (Mo.) the Court said:

> "It is a familiar canon of construction of statutes that the conditions under which the statute was enacted, and the purpose to be secured by it, should always be kept in view in determining what the Legislature meant by the language used in the statute. * * * "

We call attention to the case of Smith v. Equitable Life Assurance Society, 107 S. W. (2d) 191, l. c. 195, Par. 4, where the Court had this to say:

> "In determining the effect of an amendment of a statute the court must always proceed upon the basis that the Legislature intended to accomplish something by the amendment. Holt v. Rea, 330 Mo. 1237, 52 S. W. (2d) 877."

In order that we may properly construe Sec. 2593, supra, we invoke the reasoning of the Court in the case of Stover Bank v. Welpman, 323 Mo. 234, 19 S. W. (2d) 740, and here set forth portions of said opinion briefly: (l.c. 240,241 and 245.)

> "The Act of 1915 made two changes. It omitted use of the words 'sell' and 'selling' and omitted the words 'in a regular meeting of the board' theretofore included in the section. Section 80 of the Act of 1915 (Laws 1915, p. 140) became Section 11752, Revised Statutes 1919. . . . . .
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> "It must be assumed that the Legislature had a purpose in 1915, in eliminating the words 'sell' and 'selling' and the words 'in a regular meeting of the board.' It must be assumed also, the Legislature in retaining the words 'indorse' and 'indorsing' was cognizant

> of the provisions of the then existing Negotiable Instruments Law, and the definitions and provisions concerning indorsements therein contained, and the construction given to the prohibitive provisions by the courts. We do not conceive that the Legislature in amending the provisions by eliminating the words 'sell' and 'selling' and retaining the words 'indorse' and 'indorsing' used the latter words in a literal and unrestricted sense. Does the elimination of the word 'sell' and the words 'in a regular meeting of the board,' mean a maintenance of the inhibition undiminished, or mean a relaxation? Did the retention of the word 'indorse' make the elimination of the word 'sell' ineffective. . . . . Did the omission of the act of selling from the statement of acts inhibited, serve to limit the meaning of the word 'indorse,' and inhibit the act of indorsing, if the indorsement constituted sale only? . . . . .Section 90 eliminated the words 'sell' and 'selling,' as applied to notes received by the bank for money loaned, and Section 80 laid upon the board of directors the new requirement of making a record at each regular monthly meeting of its 'approval or disapproval of each and every purchase and sale of securities made since the last meeting.' This fairly implies that there might be not only purchases, but also sales of securities made by the officers not theretofore expressly authorized by the board but required to be submitted for its approval or disapproval. . . . . "

Applying the general canons of construction as set forth in the cases, supra, together with the interpretation that has been given to old Sec. 2593, before the amendment, supra, and Sec. 2596, supra, in the Crescent Furniture Co., case, supra, we are of the opinion that the Legislature

clearly intended that any plaintiff, except infants, may appear in the justice court, but he must conduct his suit either in person or by an attorney and, as reasoned in the Stover Bank case, the words "in person", as well as the words "by an attorney" must have a restricted meaning. In Bouvier's Law Dictionary, 1934 Edition, P. 99, "Attorney-at-Law" is defined as: "An officer in a court of justice, who is employed by a party in a cause to manage the same for him." We say this for the reason that when the Legislature saw fit to delete from the Section the words "or by agent" it clearly intended to accomplish something by this amendment as was stated in the Smith case, supra, and as was reasoned in the Stover Bank case. The words that were left in the Section were to have a restricted meaning. Our attention is called to the case of Hughes v. Mulvey, Sanford, Vol. 1, (N. Y. Sup. Ct. Rep.) 92. We do not think that this case is in point for the reason that it will be noted in reading from page 93 of the opinion that the plaintiff's wife appeared in Court, accompanied by Mr. Flannagan, a counselor-at-law. It was contended in that case by the defendant that no recovery could be had because of the admission of defendant's wife to appear and plead for him at the return of the summons. The Court in commenting had this to say: (l. c. 94)

> ". . . . The defendant below is clearly wrong in his idea that the act creating Assistant Justices courts in this city, contemplated the employment of attorneys at law only, where it speaks of the appearance of a party in person or by attorney. The word 'attorney,' was used in its enlarged sense, and embraces any person to whom the party chooses to delegate his appearance . . . . . "

We say this for the reason that we know of no case which precludes a practicing attorney from representing his client, although said client is not bodily in court at the time of such representation. This case would not be controlling in the situation before us for the further reason that the Legislature in Section 2593, supra, through the elimination

of the words "or by agent" and clearly enacted a section of the statute with wording much different from the section relied upon by the court in the Hughes case, supra.

Now turning to Section 2596, supra, it will be noted that the Legislature did not see fit to amend this Section. Of course no doubt they were fully apprised that such Section did exist in the statute for it followed in the same Article as Section 2593, supra, the one that was amended, and was no doubt apprised of the meaning given to the wording in Section 2596, supra, by the Crescent Furniture Company case. We do not think that there is any conflict between these two Sections and that each Section has been enacted to meet a particular situation different from the other. We do, however, point out the penalties invoked in Section 13314 R. S. Mo., 1939, which Section reads as follows:

> "No person shall engage in the 'practice of law' or do 'law business,' as defined in section 13313, or both, unless he shall have been duly licensed therefor and while his license therefor is in full force and effect, nor shall any association or corporation engage in the 'practice of the law' or do 'law business' as defined in section 13313, or both. Any person, association or corporation who shall violate the foregoing prohibition of this section shall be guilty of a misdemeanor and upon conviction therefor shall be punished by a fine not exceeding one hundred dollars and costs of prosecution and shall be subject to be sued for treble the amount which shall have been paid him or it for any service rendered in violation hereof by the person, firm, association or corporation paying the same within two years from the date the same shall have been paid and if within said time such person, firm, association or corporation shall neglect and fail to sue for or recover such treble amount, then the state of Missouri shall have the right to and shall sue for such treble amount and recover the same and upon the recovery thereof such treble amount shall be paid into the treasury of the state of Missouri. It is hereby made the duty

> of the attorney-general of the state of Missouri or the prosecuting attorney of any county or city in which service of process may be had upon the person, firm, association or corporation liable hereunder, to institute all suits necessary for the recovery by the state of Missouri of such amounts in the name and on behalf of the state."

We do not, in this opinion, feel called upon to pass upon the effect of the words "or by agent" as contained in Section 2596, for the reason that we believe that it is always a question of fact as to when a person is amenable to the punishment invoked in Section 13314, supra, and each case would of course rest upon an independent statement of facts and the request for this opinion does not set forth any statement of facts or call for an opinion from this office as to whether a person is amenable to the punishment invoked in Section 13314, supra.

CONCLUSION.

We are of the opinion that there is no conflict between Section 2593, Laws of Missouri, 1941, P. 414, and Section 2596 R. S. Missouri, 1939, and that the amendment of Section 2593 R. S. Missouri, 1939, clearly prohibits an agent as differentiated from an attorney at law to appear in a justice court and conduct a suit for his principal who is plaintiff in the case.

Respectfully submitted

APPROVED:

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