

It has long been an established rule of statutory construction that a general act will not be construed by the courts to repeal or modify an earlier special act embraced within its terms unless a legislative intent to this effect is clearly shown. [See] 30 Fla. Jur. *Statutes* §158; *American Bakeries Co. v. Haines City*, 180 So. 524 (Fla. 1938). Exceptions to the foregoing general rule are occasioned by circumstances described in 30 Fla. Jur., *Statutes*, §158, as follows:

The rule that a general act will not be held to impliedly repeal or modify a special or local one does not apply where the general act is a general revision of the whole subject, or where the two acts are so repugnant and irreconcilable as to indicate a legislative intent that the one should repeal or modify the other. . . .

See also, 1 Sutherland (3d ed.), §2021.

Inasmuch as Ch. 73-172, *supra*, requires Department of Revenue approval of all budgets which pertain to the operation of assessors' offices on and subsequent to January 1, 1974, regardless of the form of county government, said Ch. 73-172 appears to modify any existing legal authority for the local approval of assessors' budgets, to the extent necessary to insure that such local approval pertains to fiscal periods ending prior to January 1, 1974.

Under the foregoing construction, interim budgets prepared pursuant to §17 of Ch. 73-172, *supra*, should be submitted in the manner and form, and to the budget review authority, prescribed by any applicable local or special law or resolution. The fiscal periods encompassed by such interim budgets may not extend beyond December 31, 1973. Such limitation stems from the obvious legislative intent that the budget review procedure prescribed in Ch. 73-172, *supra*, be construed as a general and complete revision of the law pertaining to the review of assessors' budgets which cover the operation of assessors' offices subsequent to December 31, 1973.

073-321—September 6, 1973

CONSTITUTIONAL LAW

REQUIREMENT OF DEPOSIT TO SECURE PAYMENT OF COSTS OF JURY TRIAL—NOT RESTRICTIVE OF RIGHT TO JURY TRIAL

To: Monroe W. Treiman, Executive Secretary, Conference of County Court Judges of Florida, Brooksville

Prepared by: Rebecca Bowles Hawkins and Victor Walsh, Assistant Attorneys General

QUESTION:

Does the requirement of Rule 7.150, Rules of Summary Procedure, that a deposit be made to secure the payment of costs incurred by reason of a jury trial demanded by a party in civil proceedings in a county court involving a demand for property valued at less than one thousand five hundred dollars, which expense may be taxed as costs in the case, constitutionally impair or unduly restrict a litigant's right to trial by jury?

SUMMARY:

Under Rule 7.150, RSP, relating to small claims not exceeding one thousand five hundred dollars filed in county courts, a party may have a jury trial upon demand, provided a deposit is made with the clerk to secure the payment of the costs incurred by reason of the jury trial. As the amount of the deposit fixed by the judge must in all instances be

reasonable, the rule is compatible with Art. I, §22, State Const., which makes the right to jury trial "inviolable." In all other cases, the compensation of jurors is paid by the state under Ch. 40, F. S.

It is to be noted initially that the following discussion involves only civil causes at law. The Sixth Amendment to the Federal Constitution and the cases thereunder are accordingly not applicable. The federal courts have never seen fit to incorporate the Seventh Amendment into the due process clause of the Fourteenth Amendment; and, therefore, its mandate that "[i]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved" is applicable only to the federal courts. *State v. Aetna Casualty and Surety Co.*, 92 So. 871 (Fla. 1922); *Walker v. Sauvenet*, 92 U. S. 90 (1875). For an exhaustive treatment of this point see *Melancon v. McKeithen*, 345 F. Supp. 1025 (E.D. La. 1972). Constitutional infirmity of the Summary Rules of Procedure, if any, must, therefore, be gauged in the light of the Florida Constitution, particularly Art. I, §22:

The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

This section, of course, is our state counterpart of the federal seventh amendment, *supra*. Under either Constitution, before a right to jury trial in any particular cause of action can be "secure," it must have existed at common law or have been subsequently granted by legislation. *Hawkins v. Pellion Inv. Co.*, 110 So. 350 (Fla. 1926). For example, the right to a jury trial has never attached to litigation of the "three wrecks"—collisions (in admiralty), bankruptcy, and divorce—except by legislative grace.

Revised Art. V, State Const. became effective on January 1, 1973. Under §1 of the revised article, the judicial power is vested in the Supreme Court, the district courts of appeal, the circuit courts, and the county courts, and no other courts may be established by the state, any political subdivision, or any municipality. Section 6(b) thereof provides that the jurisdiction of the county courts shall be as prescribed by general law; and under the implementing statute, §34.01, F. S. (Ch. 72-404, Laws of Florida), county courts now have the jurisdiction over small claims previously exercised by such courts as small claims and county courts.

The Rules of Summary Procedure, reported at 270 So.2d 729 (Fla. 1972), effective February 1, 1973, apply to civil actions "in the county courts in which the demand or value of property involved does not exceed \$1,500.00 exclusive of costs, interest and attorney's fees." Rule 7.010(b) RSP. 7.010(a), RSP recites that "[t]hese rules shall be construed to implement the simple, speedy and inexpensive trial of actions at law in county courts." The rule in question, Rule 7.150, RSP, provides that:

Jury trials may be had upon written demand of the plaintiff at the time of the commencement of his suit or by the defendant within five days after service of notice of suit by depositing with the clerk such sum as the judge may fix as reasonable to secure the payment of cost incurred by reason of a jury trial, or otherwise jury trial may be deemed waived. The cost of summoning and paying the jurors may be taxed as costs in the case.

Rule 7.150, *supra*, is substantially the same as the provision of former §42.16, F. S. 1971, relating to small claims courts created pursuant to general-law authority, Ch. 42, *id.*, and of special laws creating small claims or civil courts to handle small claims. The validity of such a special-law provision was upheld in *State v. Parks*, 43 So.2d 347, 349 (Fla. 1949), as against the contention that it violated §3 of the Declaration of Rights of the 1885 Florida Constitution (carried forward into the

1968 Constitution as §22 of Art. I, *supra*). In upholding the provision the court, speaking through the late Mr. Justice Terrell, said:

We do not think there is any merit to this contention. The act imposes the same requirement on the plaintiff and the defendant to secure a jury. The prerequisite for securing a jury is the payment of such costs as the Court may fix by reason of a jury trial. Costs should not be such as to make it difficult or impossible to secure a jury but we think the court has the discretion to fix costs in such a manner as to prevent this.

In *State v. Taylor*, 145 So.2d 751, 755 (2 D.C.A. Fla., 1962), the same challenge, *i.e.*, of impairment of right to a jury trial, was made. In fact, the same statute, Ch. 25574, 1949, Laws of Florida, was in issue. The court held as did the court in *State v. Parks*, *supra*, that there "is no constitutional impairment of a litigant's right to trial by jury where the cost deposit is reasonable."

A somewhat analogous situation is found in the requirement of the Florida Rules of Civil Procedure that a jury trial is deemed to be waived if not demanded in accordance with the procedure therein prescribed. (1973 Rule 1.430, RCP, formerly Rule 2.1.) In *Shores v. Murphy*, 88 So.2d 294, 296 (Fla. 1956), the court sustained the rule as against the same attack made on Rule 7.150 in *State v. Parks*, *supra*, at 347. In upholding the rule the court said that the purpose to be accomplished by rules of this nature "is to expedite the disposition of cases where possible by enabling the trial courts to clear congested dockets." It was noted also that, even though not expressly so provided in our Florida Rules as in the Federal Rules of Civil Procedure, a trial judge had the discretion to order a jury trial, even though not demanded by the parties, where justice requires it (Rule 1.430, *supra*, expressly so provides.) And it was concluded that, as so interpreted, the rule in question did not violate the constitutional mandate that "the right to trial by jury shall remain inviolate." Similarly, to avoid a collision with this constitutional mandate, the cost deposits assessed by the trial judge in response to the request for jury trial as required by Rule 7.150, *supra*, must be reasonable and not such "as to make it difficult or impossible to secure a jury." *State v. Parks*, *supra*, at 349; *State v. Taylor*, *supra*, at 755.

In light of the authorities cited, it is clear that Rule 7.150, RSP, does not impair or unduly restrict the right to trial by jury, is presumptively valid under revised Art. V, State Const., and is controlling in proceedings filed in the county courts of this state in which the claim or property involved does not exceed one thousand five hundred dollars, exclusive of costs, interest, and attorney's fees. As to suits other than small claims filed in the county courts, the provisions of Ch. 40, F. S., relating to the responsibility of the state for the payment of jurors, are still in full force and effect, as noted in AGO 073-21.

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PRISONERS

PAYMENT OF MEDICAL BILLS INCURRED WHILE PRISONER ESCAPED

To: Louie L. Wainwright, Director, Division of Corrections, Tallahassee

Prepared by: Andrew W. Lindsey, Assistant Attorney General

QUESTION:

Is the Division of Corrections responsible for hospital bills incurred by an escaped prisoner during the time of his escape?