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Civil Procedure—Requirement of Court Approval for Execution of Old Judgment

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be encouraged to appear in actions so judgments will have in personam validity. The possibility that such appearance may result in the addition of other causes of action will deter general appearances."[33]

Retirement of Court Approval for Execution of Old Judgment

Under New York State law a judgment of record is good for twenty years.[34] A lien for ten years is placed on the real estate of the judgment debtor by virtue of the original judgment[35] and execution thereon may be issued as of course within the first five years.[36] However, after this five year period has elapsed, execution may be issued only where one was issued within the first five years or by leave of court.[37]

In *Levine v. Bornstein,*[38] the judgment creditor issued an execution against personal and specific real property under section 512 of the Civil Practice Act[39] to satisfy a judgment within one day of being 20 years old and on which there was no prior execution and no leave obtained pursuant to section 651 of the Civil Practice Avt. The judgment creditor, respondent here, claimed that as section 512 refers only to judgments and their liens, and section 651 refers to executions generally, section 651 is not applicable to section 512.

The Supreme Court sitting at Special Term held that the provisions of section 651 requiring leave of court before execution were applicable to executions under the authority of section 512.[40] The Appellate Division disagreed with Special Term but granted leave to appeal.[41] The Court of Appeals, however, agreed with Special Term, holding that all sections are part of the same act and that as such they should be read and construed together to determine the legislative intent and that they should all be harmonized with one another.[42] Section 512 was placed in the Civil Practice Act to clarify the right to levy by execution on real property after the judgment is ten years old but nowhere is there a suggestion that section 651 may be disregarded. But, even if it were conceded that section 512 gives the judgment creditor a right to execute solely on real property without leave of court, the wording of the execution here defeated his cause as it stated the judgment should be satisfied out of personal property, or if the same could not be

33. Alkalaj v. Alkalaj, *supra* note 29, at 327, 73 N.Y.S.2d at 679.
34. N. Y. Civ. Prac. Act §44.
35. N. Y. Civ. Prac. Act §510.
36. N. Y. Civ. Prac. Act §650.
37. N. Y. Civ. Prac. Act §651.
38. 4 N.Y.2d 241, 173 N.Y.S.2d 599 (1958).
39. N. Y. Civ. Prac. Act §512. After 10 years has passed from the date of the judgment, real property which the judgment debtor or his heir or devisee has title to in any county may be levied upon by virtue of an execution against the property.
40. 5 Misc.2d 155, 159 N.Y.S.2d 240 (Sup.Ct. 1957).
41. 4 A.D.2d 55, 162 N.Y.S.2d 522 (1st Dep't 1957).
42. McKinney's Consolidated Laws, Statutes, §§97, 98.

found, out of specific real estate; thus, the execution was both general and specific and as such violated section 651. Leave of court was in this case necessary.

To hold otherwise would mean that "a judgment creditor or his assignee who sleeps on his rights for 5 years must obtain leave to issue an execution, whereas if he sleeps on his rights for 10 or as many as 20 years, such leave is unnecessary."[43]

Service of Process—Immunity of Non-Resident Attending Court in New York

A non-resident defendant was indicted in a federal court located in New York for a federal offense. Without being served with a warrant or taken into custody, he appeared voluntarily before the court, pleaded not guilty, posted bond, and returned to his home outside the State. Subsequently, he returned to the court, changed his plea to guilty, and returned to his home, still under bail. At the time set for sentencing, he again returned to the court, was sentenced, and paid his fine. As he left the courthouse, he was served with a summons issued out of a New York court in an unrelated civil action, the service of which was contested on this appeal.[44]

It is well settled under the common law of New York that one who comes into the jurisdiction solely for the purpose of appearing in a proceeding of a judicial nature either as a party or witness is immune from service of process while within the state and until the termination of a reasonable time after the proceeding to enable him to leave the state.[45] The purpose of this immunity is to encourage voluntary attendance in New York courts of persons beyond the compulsory reach of the subpoena power, so as to facilitate the administration of justice.[46] But where the attendance is compulsory, the reason for the rule fails and the immunity is withheld. Thus, where one was brought into the jurisdiction by extradition, immunity was not available.[47] Similarly, as held in the case *Netograph Mfg. Co. v. Scrugham*,[48] one who is free on bail is considered constructively in the custody of the court and his appearance is not voluntary. However, as was held in *Bunce v. Humphrey*,[49] where a witness appeared in the state voluntarily for the purpose of attending court, the fact that he was then issued a subpoena to appear did not change the voluntary character of his entry into the jurisdiction.

The legislature has enacted a statutory exception to the rule that one com-

43. Levine v. Bornstein, 4 N.Y.2d 241, 244, 173 N.Y.S.2d 599, 601 (1958).
44. 4 N.Y.2d 494, 176 N.Y.S.2d 331 (1958).
45. Parker v. Marco, 136 N.Y. 585, 32 N.E. 989 (1893); Chase National Bank v. Turner, 269 N.Y. 397, 199 N.E. 636 (1936).
46. Netograph Mfg. Co. v. Scrugham, 197 N.Y. 377, 380, 90 N.E. 962, 963 (1910).
47. People ex rel. Post v. Cross, 135 N.Y. 536, 32 N.E. 246 (1892).
48. 197 N.Y. 377, 90 N.E. 962 (1910).
49. 214 N.Y. 21, 108 N.E. 95 (1915).