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Creditor's Rights—Sufficiency of Bankruptcy Proceedings—Per Curiam

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ing in protracted negotiations which misled and lulled the plaintiff into inactivity, was estopped from asserting plaintiff's nonenforcement of its lien as a defense.²⁷

Sufficiency of Bankruptcy Proceedings — Per Curiam

Execution pursuant to a 1931 judgment was properly vacated both because the permission of court required by section 651 of the Civil Practice Act²⁸ was not obtained and because the judgment debtor had been discharged in bankruptcy. Since the judgment was properly listed in the bankruptcy proceedings, although the addresses of the judgment creditors were listed as unknown, the burden was upon the judgment creditors to "show that the bankrupt knew or in the exercise of reasonable diligence should have known their addresses . . . at the time of the bankruptcy proceedings."²⁹

CRIMINAL LAW

Reindictment After Reversal of Conviction Not Double Jeopardy

In *People v. Ercole*,¹ an appeal from a conviction for larceny had been reversed and the indictment dismissed because it had been improperly amended.² The defendant was reindicted and thereafter moved for a dismissal on the ground that he was being placed in jeopardy twice for the same offense. The motion was granted, and affirmed by the Appellate Division.³ The Court of Appeals unanimously reversed, holding that a defendant who procures a reversal of a conviction for legal error at his trial cannot plead the former conviction in bar to a second trial for the same offense.

The defendant relied on a number of cases, all of which were based on the unlawful termination of the trial without the consent of the accused.⁴ New York has long held, in double jeopardy cases, that the essence of a successful appeal on

27. An estoppel "rests upon the word or deed of one party upon which another rightfully relies, and so relying changes his position to his injury". *Metropolitan Life Ins. Co. v. Childs Co.*, 230 N.Y. 285, 292, 130 N.E. 295, 298 (1921).

28. *Levine v. Bornstein*, 4 N.Y.2d 241, 173 N.Y.S.2d 599 (1958).

29. *Shire v. Bornstein*, 4 N.Y.2d 299, 174 N.Y.S.2d 645 (1958).

1. *People v. Ercole*, 4 N.Y.2d 617, 176 N.Y.S.2d 649 (1958).

2. 308 N.Y. 425, 126 N.E.2d 543 (1955).

3. *People v. Ercole*, 4 A.D.2d 881, 167 N.Y.S.2d 548 (2d Dep't 1957).

4. *People ex rel. Stabile v. Warden*, 202 N.Y. 138, 95 N.E. 729 (1911) (Judge arbitrarily dismissed a jury that had not reached a verdict); *People ex rel. Blue v. Kearney*, 292 N.Y. 679, 56 N.E.2d 102 (1944) (During trial for manslaughter the judge discharged the jury. He felt that under N.Y. Code Cr. Proc. §400 defendant should be reindicted for murder in the second or first degree).