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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 Act[28] 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).

the law is that the prior trial is a nullity.[5] This position is in accord with that taken by the United States Supreme Court in interpreting the meaning of double jeopardy under the federal Constitution,[6] the "convicted person cannot avoid the jeopardy in which he stands and then assert it as a bar to subsequent jeopardy."[7]

Public Intoxication — "Public Place"

Section 1221 of the Penal Law provides for the arrest of any person found intoxicated in a public place. In *People v. Hook*,[8] the defendant was arrested while sleeping in a car in the rear of a private driveway not his own. Although there was sufficient evidence that he was intoxicated, the Court of Appeals unanimously reversed his conviction, holding that the driveway was not a public place as required by the statute.[9]

The Court defined a "public place" as a place "which is in point of fact public, as distinguished from private, a place visited by a considerable number of persons and usually accessible to the neighboring public."[10] While this definition appears adequate, it should be noted that the legal term *public place* can be more relative than absolute. Cases hinging on the determination of what is or is not a public place within the meaning of a statute usually involve mixed questions of law and fact. Circumstances such as the location, nature, and use of the place,[11] the time of day, and whether the complaining witnesses were specifically invited can be crucial. The most important consideration in deciding the question is the intent of the statute itself and the type of offense prohibited.[12]

Although the determination of what constitutes a public place can vary depending on the circumstances, no fault can be found with the Court's decision in the instant case, particularly in view of the defendant's unobtrusive conduct. A fair reading of the statute would indicate that the intent of the legislature was to protect the public from offensive contact with inebriates, rather than an attempt to control the private drinking habits of the populace.

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5. People v. Polmer 109 N.Y. 413, 17 N.E. 213 (1888).
6. Ball v. United States, 163 U.S. 662 (1895).
7. Murphy v. Massachusetts, 177 U.S. 155, 158 (1899).
8. 3 N.Y.2d 485, 168 N.Y.S.2d 958 (1957).
9. Accord: People v. Lane, 8 Misc.2d 325, 32 N.Y.S.2d 61 (City Court 1942); People v. Brown, 64 Misc. 677, 120 N.Y.Supp. 859 (County Ct. 1909).
10. Madison Products v. Coler, 242 N.Y. 467, 473-474, 152 N.E. 264, 266 (1926); People v. Whitman, 178 App.Div. 193, 194-196, 165 N.Y.Supp. 148, 149-150 (2d Dep't 1917).
11. Bowker v. Semple, 51 R.I. 142, 152 A. 604, 606 (1930).
12. For example, exhibitionism, although performed on private property, may well violate the statute against indecent exposure in a public place, whereas a person found intoxicated in the same place might not be guilty of public intoxication. See People v. De Vigne, 27 Mich. 635, 261 N.W. 101, 102 (1935); People v. Whitman, *supra* note 10.