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## Civil Practice—C. P. A. § 51-a and Interpleader

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## THE COURT OF APPEALS, 1951 TERM

### II. CIVIL PRACTICE

#### *C. P. A. §51-a and Interpleader*

New York Civil Practice Act §51-a provides that a claimant to a sum of money due on contract may not commence an action for such sum after the expiration of one year from notice to the claimant that an action commenced by a third party to recover the same sum of money is pending. Under this section the court may direct that the defendant obligor furnish an undertaking in an amount to be fixed by the court pending expiration of the year period. The court, before issuing an order pursuant to §51-a, must be shown that the claimant whose remedy is to be affected cannot with due diligence be personally served with process within the state.<sup>1</sup>

The Court of Appeals, in *The Solicitor for the Affairs of his Majesty's Treasury v. Bankers Trust Co.*,<sup>2</sup> was recently confronted with the question of the defendant obligor's rights after the expiration of the statutory period. A British national had deposited funds with the defendant bank. A British law enacted in 1947 required British subjects to exchange dollars for pounds sterling. Upon refusal of the British subject to comply with that law, the British solicitor made a demand on defendant and instituted action in New York for such subject's deposit in defendant bank. The British subject, at all times residing in Scotland, was served according to §51-a. The proceeding against defendant bank was stayed for the period of one year, during which the British subject failed to act. In the interim, defendant bank had been required pursuant to §51-a to pay the contested sum into court. Defendant then claimed that the money remained the property of the British subject, who was said to be an indispensable party to the action. Plaintiff moved to strike out the answer on the grounds that the bank had no right to interpose a claim on behalf of the British subject, and plaintiff declared that by the proceeding pursuant to §51-a, the defendant is discharged from further liability as in an action for interpleader.<sup>3</sup> The broad question presented was whether §51-a, included as it is under the general heading "limitations of time", barred the British subject's right, or only his remedy in New York. The Court regarded the question

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1. *Koninklijke Lederfabrick v. Chase National Bank*, 177 Misc. 186, 30 N. Y. S. 2d 518 (Sup. Ct. 1941), *aff'd*, 263 App. Div. 815, 32 N. Y. S. 2d 107 (1st Dep't 1941).

2. 279 App. Div. 565, 107 N. Y. S. 2d 372 (1st Dep't 1951), *rev'd* — N. Y. —, 107 N. E. 2d 455 (1952).

3. C. P. A. §§ 286, 287, 287 (d).

as answered by its decision in *Hanna v. Stedman*,<sup>4</sup> which held that for the purposes of an action of interpleader, a debt is not a *res* which permits an adjudication *in rem*, but rather requires *in personam* jurisdiction of the parties.<sup>5</sup> Thus the court held that although the British subject's New York *remedy* was barred by the statutory limitation of §51-a, defendant remained liable to suit in sister states where it maintained assets and where different periods of limitation were provided. The obvious fact that the intent of §51-a was to protect New York debtors from double liability, influenced the court's ultimate determination that the defendant could apply for remission of the sum paid into court and continue to defend the action.<sup>6</sup> The Court thus held C. P. A. §133, which provides for discharge of the debtor from liability upon payment into court, inapplicable where, under §51-a, an indispensable party has failed to appear.<sup>7</sup> The Court stated that the sole purpose of the deposit of security was to protect plaintiff, and not to discharge defendant from liability as in an action of interpleader. Thus §51-a was construed as a statute of limitation, designed to protect New York debtors from double liability and harassing suits. Where defendant has paid the money into court, and where because a claimant does not appear, the danger of a later suit in a foreign jurisdiction persists, the debtor is permitted to defend on the ground that the indispensable party has not been joined.

### *Power of a Court to Disqualify Attorneys*

One of the inherent powers of all courts of record is the power, in a proper case, to disqualify an attorney from appearing in a matter pending before that court.<sup>8</sup> For example, where an attorney possesses privileged information concerning an opposing party the court may bar the attorney's appearance on the ground that the party's right to a fair hearing may be prejudiced.<sup>9</sup> The further power to discipline or suspend an attorney for professional

4. 230 N. Y. 326, 130 N. E. 566 (1921).

5. But see *Feuchtwanger v. Central Hanover Bank and Trust Co.*, 288 N. Y. 342, 43 N. E. 2d 434 (1942); Note, 37 CORN. L. Q. 533 (1952).

6. Bulletin #50 pp. 147-148 (1939) by Henry R. Fraser, Legislative Reporter of the New York State Bar Assn.

7. C. P. A. § 133 reads: "A party bringing money into court pursuant to the direction of the court is discharged thereby from all further liability to the extent of the money so paid."

8. *Brown v. Miller*, 286 F. 944 (D. C. Cir., 1922).

9. *Watson v. Watson*, 171 Misc. 175, 11 N. Y. S. 2d 537 (Sup. Ct. 1939).