

12-1-1953

## Civil Practice—Deposit in Lieu of Bail

Sally Peard

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Civil Procedure Commons](#)

---

### Recommended Citation

Sally Peard, *Civil Practice—Deposit in Lieu of Bail*, 3 Buff. L. Rev. 73 (1953).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol3/iss1/21>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact [lawscholar@buffalo.edu](mailto:lawscholar@buffalo.edu).

*Deposit in Lieu of Bail*

Civil Practice Act §§ 856, 858, 859, and 860 govern the giving of a deposit in lieu of bail. Such deposit is deemed the property of the defendant for purposes of the action and if it remains on deposit when final judgment is rendered, it must be applied in satisfaction of the judgment. If a third person makes the deposit, the money is deemed the property of the third person, subject however, to the plaintiff's interest therein. Where it is clear that a third person is making the deposit in lieu of bail for the defendant, under these sections, the fund is to be applied to satisfy plaintiff's judgment.<sup>17</sup> A third person is presumed to know of the statutory provisions and, therefore, gives implied assent to them by the voluntary act of putting the money up.<sup>18</sup>

In a recent case, the Court of Appeals again held that the plaintiff is entitled to have the deposited money applied to the satisfaction of its judgment as against the claim of the third party,<sup>19</sup> relying on the plain meaning of the statute.

The decision in the case was the obvious one under the statute and previous decisions. The reason, perhaps, that the court allowed appeal was the misapplication by the lower court, in the instant case and in others,<sup>20</sup> of the decision in *Finelite v. Sonberg*,<sup>21</sup> upon which the third person relied. That case was an action by a creditor of the defendant against the defendant and the third person. The defendant had assigned the third party's deposit back to the third party, and then substituted bail for this deposit. The only issue was whether the assignment had defeated the rights of defendant's creditors. The rights of the original plaintiff were not involved in the case.

*Statute of Limitations*

An action to recover damages for personal injury resulting from negligence is governed by a three year period of limitation, C. P. A. § 49(6). Action on contract, express or implied, is governed by a six year statute of limitation, C. P. A. § 48(1). In the United States, the "weight of authority is to the general effect that where a statute limits the time within which an action for 'injuries to the person' may be brought, the statute is applicable to all actions, the real purpose of which is to recover for an injury

---

17. *Commercial Warehouse Co. v. Graher*, 45 N. Y. 393 (1871); *Lichter v. Raff*, 149 Misc. 53, 266 N. Y. Supp. 748 (N. Y. City Ct. 1933).

18. *People ex rel. Gilbert v. Laidlaw*, 102 N. Y. 588, 7 N. E. 910 (1886).

19. *Standard Electric Equipment Corp. v. Laszkowski*, 305 N. Y. 58, 110 N. E. 2d 555 (1953).

20. *Steinberg v. Frankel*, 154 Misc. 179, 276 N. Y. Supp. 694 (N. Y. City Ct. 1935).

21. 75 App. Div. 455, 78 N. Y. Supp. 338 (1st Dep't 1903).