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Civil Practice—Statute of Limitations

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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.[17] 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.[18]

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,[19] 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,[20] of the decision in *Finelite v. Sonberg*,[21] 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. Graber*, 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).

to the person, whether based on contract or tort . . . Some support for this general proposition is found [in New York]."[22]

The only indication of the view of the Court of Appeals, directly applicable, is *dictum* in *Schmidt v. Merchants Dispatch Transp. Co.*, to the effect that, "the Legislature may, if it choses, impose one period of limitation for a cause of action to recover damages for a personal injury arising from negligence and different periods of limitation for a cause of action for the same injury where liability may arise on other grounds; and, in determining which period of limitation applies to a particular cause of action, the criterion is the *origin* and *nature* of the liability asserted."[23]

However, it has been held in New York that an action for breach of implied warranty as to the fitness of goods under Personal Property Law § 96(1) may be maintained, independent of, or without proof of, a showing of negligence.[24] The Statute of Limitations was not involved in these decisions.

In a recent case,[25] the Court of Appeals was faced with the problem of breach of warranty versus negligence, and of which statutory period to apply. Plaintiff sued as administrator for his infant son who died from burns incurred when a cowboy suit he was wearing came in contact with a flame and ignited. Action was brought more than three years after the accident to recover damages for the boy's pain and suffering before death. The complaint contained many causes of action, but the only one considered by the court was breach of an implied warranty of fitness for use against the immediate vendor of the cowboy suit. Defendant's motion to dismiss on the ground that the suit was in reality one in negligence and governed by a three year limitation was denied in the lower court and by the Court of Appeals.

By this case, the Court of Appeals has at last made a direct holding on the problem. The court rejected the harsh ruling of the *Schlick* case[26] (breach of warranty action disallowed where plaintiff injured from glass in jam, because three year negligence statute barred the action) and accepted the view of courts of other

22. See Note, 157 A. L. R. 763, 766 (1944), citing only two applicable cases, *Schmidt v. Merchants Dispatch Transp. Co.*, 270 N. Y. 287, 200 N. E. 824 (1936); *Schlick v. New York Dugan Bros.*, 175 Misc. 182, 22 N. Y. S. 2d 238 (N. Y. City Ct. 1940). See, 10 BROOKLYN LAW REV. 180 (1940).

23. *Schmidt v. Merchants Dispatch Transp. Co., supra* note 22 at 299, 200 N. E. at 826.

24. *Ryan v. Progressive Grocery Stores, Inc.*, 255 N. Y. 388, 175 N. E. 105 (1931); *Gimenez v. Great Atlantic & Pacific Tea Co.*, 264 N. Y. 390, 191 N. E. 27 (1934); *Greco v. S. S. Kresge Co.*, 277 N. Y. 26, 12 N. E. 2d 557 (1938).

25. *Blessington v. McCrory Stores Corp.*, 305 N. Y. 140, 111 N. E. 2d 421 (1953).

26. *Schlick v. New York Dugan Bros., supra* note 22.

states.[27] Now, by this more lenient policy, damages for personal injuries beyond the value of the goods purchased may be had in a breach of warranty action, where negligence may not be involved, without confining the plaintiff to the three year limitation.

Res Judicata and Election of Remedies

"*Res judicata* is a common law doctrine designated to bar litigation of an adjudicated claim."[28] The test of whether the same cause of action has been previously adjudicated has been variously expressed. Judge Lehman defined the test as, "the violation of but one right by a single legal wrong . . . the subject matter and the ultimate issues are the same."[29] Judge Cardozo determined that, "a judgment in one action is conclusive in a later one . . . when the two causes of action have such a measure of identity that a different judgment in the second would destroy or impair rights or interests established by the first."[30]

In a recent case,[31] these tests were applied by the court. The plaintiff originally sued for money due him under an oral contract of employment. The complaint was dismissed on the grounds that the contract did not comply with the Statute of Frauds. Leave to amend the complaint was granted, and the amended complaint set forth a cause of action for an accounting based on the oral agreement. After trial, the judgment was directed for the defendant, the court holding that the action was still barred by the Statute of Frauds. Plaintiff then commenced an action in *quantum meruit*. The defendant moved under Rule 107 to dismiss the complaint on the ground of *res judicata*. The Court of Appeals held that the previous contract action was not a bar to a *quantum meruit* suit. "The two actions involve different 'rights' and 'wrongs' . . . The rights and interests established by the previous adjudication will not be impaired by a recovery . . . in *quantum meruit*."[32]

The court reinforced its determination with cases where an action on an express contract did not preclude recovery in *quantum meruit*, in the same action.[33] Other cases cited pointed up the

27. *Challis v. Hartloff*, 136 Kan. 823, 18 P. 2d 199 (1933); *Gotten v. Owl Drug Co.*, 6 Cal. 2d 683, 59 P. 2d 142 (1936); *Schuler v. Union News*, 295 Mass. 350, 4 N. E. 2d 465 (1936).

28. PRASHKER, NEW YORK PRACTICE 194 (2d ed., 1951).

29. *De Coss v. Turner & Blanchard, Inc.*, 267 N. Y. 207, 211, 196 N. E. 28, 30 (1935).

30. *Schuylkill Fuel Corp. v. B. & C. Realty Corp.*, 250 N. Y. 304, 306-7, 165 N. E. 456, 457 (1929).

31. *Smith v. Kirkpatrick*, 305 N. Y. 66, 111 N. E. 2d 209 (1953).

32. *Id.* at 72, 111 N. E. 2d 212.

33. *Young v. Farwell*, 165 N. Y. 341, 59 N. E. 143 (1901); *Marsh v. Masterton*, 101 N. Y. 401, 5 N. E. 59 (1886).