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Surrogate's Court Procedure Act § 1407: A Copy of a Missing Will May Not Be Admitted to Probate Unless the Independent Testimony of at Least One Witness Clearly and Distinctively Establishes the Substantive Terms of the Will

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John James Lynch

SURROGATE'S COURT PROCEDURE ACT

Surrogate's Court Procedure Act § 1407: A copy of a missing will may not be admitted to probate unless the independent testimony of at least one witness clearly and distinctively establishes the substantive terms of the will

A lost or unintentionally destroyed will, which has been properly executed[61] but not revoked,[62] may be admitted to probate only when its substantive provisions have been proved clearly and distinctively either by two witnesses, or by one witness and a true copy of the original document.[63] Although the New York courts

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[61] The EPTL sets forth several requirements for the proper execution and attestation of most wills. *See* EPTL § 3-2.1 (1981). Notably, in *In re* Allrecht, N.Y.L.J., Feb. 23, 1973, at 21, col. 3 (Sur. Ct. Westchester County), Surrogate Jaeger refused to admit to probate an executed copy of a will because three witnesses testified against its due execution. Conversely, in *In re* Will of Sylvain, N.Y.L.J., Dec. 11, 1979, at 13, col. 6 (Sur. Ct. Queens County), the court, over the objection of contestants who claimed that the will was not duly executed, admitted the will to probate even though its contents were proved merely by a carbon copy of the original instrument and the testimony of the attorney-draftsman. The surrogate noted, however, that the contestants failed to satisfy their burden of proof that execution was procured through fraudulent or undue means. *Id.* Notwithstanding these instances, a claim against due execution is not commonly raised. *See In re* Estate of Utegg, 91 Misc. 2d 21, 22, 396 N.Y.S.2d 992, 993 (Sur. Ct. Erie County 1977); *In re* Estate of Flasza, 57 Misc. 2d 347, 348-49, 292 N.Y.S.2d 815, 816-17 (Sur. Ct. Erie County 1968).

[62] A missing will, previously executed by the testator and known to have been in his possession, is presumed to have been destroyed by the decedent with intent to revoke it. *E.g.*, Collyer v. Collyer, 110 N.Y. 481, 486, 18 N.E. 110, 112 (1888); Schultz v. Schultz, 35 N.Y. 653, 653 (1866); *In re* Estate of Schroter, N.Y.L.J., Apr. 9, 1979, at 15, col. 1 (Sur. Ct. N.Y. County); *see, e.g., In re* Will of Fox, 9 N.Y.2d 400, 405-10, 174 N.E.2d 499, 502-05, 214 N.Y.S.2d 405, 409-14 (1961); *In re* Lee, N.Y.L.J., Feb. 11, 1977, at 6, col. 6 (Sur. Ct. N.Y. County). In this situation, in order for the will to be admitted to probate, the proponent must overcome this presumption by showing that the will existed at the time of death or was destroyed accidentally, by disaster, intentionally by a third party, or even by the testator, provided of course, that he did not possess an intent to revoke the will. *In re* Will of Fox, 9 N.Y.2d at 407-08, 174 N.E.2d at 504, 214 N.Y.S.2d at 412; *In re* Amglio, N.Y.L.J., Sept. 21, 1979, at 12, col. 5 (Sur. Ct. Kings County); *In re* Crea, N.Y.L.J., Sept. 22, 1970, at 19, col. 5 (Sur. Ct. Bronx County); FIFTH REPORT OF THE TEMPORARY STATE COMMISSION ON THE MODERNIZATION, REVISION AND SIMPLIFICATION OF THE LAW OF ESTATES 466-74 (1966), *see, e.g., In re* Will of Moore, N.Y.L.J., Dec. 13, 1979, at 15, col. 5 (Sur. Ct. Westchester County); *In re* Estate of Graeber, 53 Misc. 2d 640, 641, 279 N.Y.S.2d 429, 430 (Sur. Ct. Erie County 1967).

[63] Section 1407 of the Surrogate's Court Procedure Act (SCPA) provides:

A lost or destroyed will may be admitted to probate only if

1. It is established that the will has not been revoked.

have held that a copy of a will, by itself, is insufficient for probate admittance, they have not definitively determined whether a copy of a will and testimony corroborating only its authenticity will satisfy the evidentiary requirement of the statute.[64] Recently, in *In re Kleefeld*,[65] the Court of Appeals addressed this issue, holding that a lost or unintentionally destroyed will may not be admitted to probate unless independent testimony of a witness clearly and dis-

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> 2. Execution of the will is proved in the manner required for the probate of an existing will, and
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> 3. All of the provisions of the will are clearly and distinctly proved by each of at least 2 credible witnesses or by 1 witness and a copy of draft of the will proved to be true and complete.

SCPA § 1407 (McKinney 1967). Lost and destroyed wills may only be admitted to probate as prescribed by statute. *See* Hatch v. Sigman, 1 Dem. Sur. 519, 521 (Sur. Ct. Cattaraugus County 1883). Although it was the early rule that such wills could be established solely by an action in the supreme court, ch. 6, §§ 63-67, [1829] N.Y. Laws, the legislature enacted a statute in 1870 which provided that the surrogate would have jurisdiction over attempts to probate lost and destroyed wills, ch. 359, §§ 1-15, [1870] N.Y. Laws 826 (repealed 1880 and 1881). This statute subsequently was repealed, but a substantially similar provision was incorporated into section 1865 of the Code of Civil Procedure, which later became section 2613 of the laws of 1914. *See* ch. 443, § 2613, [1914] N.Y. Laws 1808. Furthermore, section 2613 was re-enacted as section 143 of the Surrogate's Court Act, which provided:

> [a] lost or destroyed will can be admitted to probate in a surrogate's court, but only in case the will was in existence at the time of the testator's death, or was fraudulently destroyed in his lifetime, and its provisions are clearly and distinctly proved by at least two credible witnesses, a correct copy or draft being equivalent to one witness.

Ch. 928, § 143, [1920] N.Y. Laws 595. The present statute, codified at SCPA § 1407 (McKinney 1967), is modeled after section 143 and, with the exception of minor changes in phraseology and the addition of section 2, reiterates the prior section in toto. 10B J. Cox, J. Arenson, & S. Medina, New York Civil Practice ¶ 1407.03, at 14-101 (1981); *see* SCPA § 1407, commentary at 201-02 (McKinney 1967); 9 P. Rohan, New York Civil Practice ¶ 1-2.18[12][a] (1981).

[64] When considering whether to admit a lost will to probate, courts unhesitatingly have recited the statutory mandate imposed by section 1407 and its predecessor section. *See In re* Estate of Hughson, 97 Misc. 2d 427, 428, 411 N.Y.S.2d 839, 840 (Sur. Ct. Erie County 1978); *In re* Will of Yanover, 16 Misc. 2d 128, 129, 182 N.Y.S.2d 961, 963 (Sur. Ct. Nassau County 1959). Nevertheless, upon close scrutiny of the cases concerning the "copy plus one witness" provision, it appears that the courts, while ostensibly applying the statute to the case in question, have not clearly indicated the evidentiary standard being employed. *Compare In re* Estate of Utegg, 91 Misc. 2d 21, 22, 396 N.Y.S.2d 992, 993 (Sur. Ct. Erie County 1977) ("all the provisions of the will have been clearly and distinctly proved . . . and the copy of the will submitted to this court has been proved to the satisfaction of this court to be true and complete") *with In re* Will of Hargett, 193 Misc. 332, 334, 84 N.Y.S.2d 450, 452 (Sur. Ct. N.Y. County 1948) ("[b]eing satisfied that the will had been properly executed and that the paper offered as a copy correctly states the text of the original instrument the court directs that the will of deceased be admitted to probate").

[65] 55 N.Y.2d 253, 433 N.E.2d 521, 448 N.Y.S.2d 456 (1982).

tinctively establishes the substantive provisions of the will.[66]

In *Kleefeld*, the testator, after executing his will, gave the original document to his attorney and retained a duplicate copy.[67] Shortly thereafter, the attorney died.[68] Since the original will could not be found subsequent to the testator's death, a proceeding was commenced to admit the lost will to probate.[69] At the trial, the proponent attempted to satisfy his evidentiary burden by the submission of a conformed copy of the will and testimony of a witness tending to establish the copy's genuineness.[70] Notwithstanding the inability of the witness to recall the substantive terms of the will, the Surrogate's Court, New York County, admitted the will to probate, holding that section 1407 of the Surrogate's Court Procedure Act (SCPA) merely requires proof of the authenticity of the submitted copy as a complete duplication of the original will.[71] Without opinion, the Appellate Division, First Department, affirmed.[72]

On appeal, a divided Court of Appeals reversed.[73] Writing for the majority,[74] Judge Wachtler initially observed that the plain language of the statute itself militates toward requiring the witness to testify as to the contents of the original will, not merely as to

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[66] *Id.* at 256, 433 N.E.2d at 522, 448 N.Y.S.2d at 457.

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.* at 256-57, 433 N.E.2d at 523, 448 N.Y.S.2d at 458. The legal secretary who typed the original will testified that she recognized her initials on the duplicate copy and that the print type was identical to that on her typewriter. *Id.* at 257, 433 N.E.2d at 523, 448 N.Y.S.2d at 458. Notably, however, the secretary testified that she never read the will after having typed it and that she could not recall any of its specific terms. *Id.*

[71] *Id.* Liminarily, the surrogate determined that the presumption of revocation of a will, *see* note 63 *supra*, had been rebutted by testimony tending to show that the original will was lost while in the possession of the attorney-draftsman and by the contestants' failure to prove that the testator revoked the will by a physical act or a superseding will or codicil. *Id.*

[72] *See* 79 App. Div. 2d 567, 567, 434 N.Y.S.2d 232, 233 (1st Dep't 1980). In a vigorous dissent, Presiding Justice Murphy opined that the policy underlying section 1407 would be subverted if a will could be established merely by witnesses' testimony as to the events surrounding the execution of a will rather than as to the contents of the will itself. *Id.* at 568, 434 N.Y.S.2d at 234 (Murphy, P.J., dissenting). Justice Murphy emphasized that when dealing with lost wills, it is imperative "that the proponent come forward with certain minimal testimony as to the circumstances under which the conformed will was found." *Id.* at 568-69, 434 N.Y.S.2d at 234. (Murphy, P.J., dissenting). Moreover, the dissent contended, "evidentiary silence on this point strongly militates in favor of rejection rather than acceptance of [the copy] as a true copy of the original will." *Id.* (Murphy, P.J., dissenting).

[73] 55 N.Y.2d at 257, 433 N.E.2d at 523, 448 N.Y.S.2d at 458.

[74] Judge Wachtler authored the opinion of the Court, in which Chief Judge Cooke and Judges Gabrielli and Jones concurred. Judges Meyer and Jasen dissented. Taking no part in the decision was Judge Fuchsberg.

the legitimacy of the copy.[75] Furthermore, the Court stated that the legislative history of the statute should not be interpreted to mean that a conformed copy of the will is a substitute for the testimony of two witnesses rather than one.[76] Reasoning that a contrary construction of the legislative history would permit "a copy of the will alone" to establish the contents of the original document, Judge Wachtler stated that such a result is clearly unsupported by the statutory language.[77] Finally, the Court noted that the policy of preventing the probate of fraudulent wills and the fact that SCPA § 1407 is a "limited statutory exception to the common law Statute of Wills" require a strict interpretation of the terms of the statute.[78]

In a lengthy dissent, Judge Meyer distinguished the situation in which a lost or unintentionally destroyed will is sought to be probated without a copy of the original document from one in which a conformed copy exists.[79] Judge Meyer contended that the latter situation should require that a single witness merely identify the copy as a true and complete statement of the decedent's will.[80] Advocating a liberal construction of the statute in order to foster justice and prevent fraud, the dissent further argued that SCPA § 1407 did not alter prior judicial constructions of the "copy plus one provision."[81] Judge Meyer concluded, therefore, that in light of the advancement from the "feckless formalism" traditionally required in will cases and the judicial intent to bring the testamentary plan of the testator to fruition, one would have to "turn the meaning and purpose of the lost will statute on its head" not to admit the conformed copy of a missing will to probate.[82]

Although the *Kleefeld* decision is consistent with the statutory mandate of section 1407 and reaffirms New York's strict adherence

[75] *Id.* at 258, 433 N.E.2d at 523, 448 N.Y.S.2d at 458. The majority stated that had the legislature intended a mere copy of a will to suffice for probate admittance, it would have expressly so provided. *Id.*

[76] *Id.* at 259, 433 N.E.2d at 523, 448 N.Y.S.2d at 458.

[77] *Id.* To admit a will to probate solely on the basis of testimony concerning the execution of the will rather than as to the contents of the will itself, the Court noted, would subvert the policy of section 1407 and foster fraud. *Id.* at 259-60, 433 N.E.2d at 524, 448 N.Y.S.2d at 459.

[78] *Id.* at 260, 433 N.E.2d at 524-25, 448 N.Y.S.2d at 459-60.

[79] *Id.* at 260-65, 433 N.E.2d at 525-28, 448 N.Y.S.2d at 460-63. (Meyer, J., dissenting).

[80] *Id.* at 261-65, 433 N.E.2d at 525-28, 448 N.Y.S.2d at 460-63. (Meyer, J., dissenting).

[81] *Id.* at 265-66, 433 N.E.2d at 528, 448 N.Y.S.2d at 463. (Meyer, J., dissenting).

[82] *Id.* at 270-71, 433 N.E.2d at 530-31, 448 N.Y.S.2d at 465-66. (Meyer, J., dissenting).

to rigid formalism in will litigation,[83] it appears that the Court's requirement that all of the substantive terms of a will be proved independently of the conformed copy might cause undue hardship to the proponent of a will. This is particularly true when the attorney-draftsman is not available to testify as to the contents of the missing will.[84] Indeed, it is submitted that most competent witnesses invariably will be unable to recall all of the will's terms.[85]

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[83] Traditionally, courts in New York have adhered strictly to rigid formalism in will cases. *See, e.g., In re* Will of Lavigne, 76 App. Div. 2d 975, 976, 428 N.Y.S.2d 762, 764 (3d Dep't 1980), *aff'd*, 52 N.Y.2d 1008, 420 N.E.2d 92, 438 N.Y.S.2d 294 (1981). *See also In re* Will of Winters, 277 App. Div. 24, 27, 98 N.Y.S.2d 312, 316 (1st Dep't 1950) (statute of wills should be strictly construed), *aff'd*, 302 N.Y. 666, 98 N.E.2d 477 (1951); *In re* Estate of McCaffrey, 174 Misc. 162, 168, 20 N.Y.S.2d 178, 185 (Sur. Ct. N.Y. County 1940) (the decedent's intention cannot be implemented where the law has not been obeyed). Recently, however, in *In re* Snide, the Court of Appeals cast into doubt the traditionally required formalism in will litigations. *In re* Snide, 52 N.Y.2d 193, 196-97, 418 N.E.2d 656, 657-58, 437 N.Y.S.2d 63, 64-65 (1981). In *Snide*, a husband and wife mistakenly signed each other's reciprocal will. *Id.* at 194, 418 N.E.2d at 656, 437 N.Y.S.2d at 63. Relying upon the decisions of other countries, the Court of Appeals admitted the husband's will to probate, notwithstanding the fact that it was executed by the proponent-wife. *Id.* at 195-96, 418 N.E.2d at 657, 437 N.Y.S.2d at 64 (citing *In re* Brander, [1952] 4 D.L.R. 688, 689 (Can.), and Guardian, Trust & Ex'rs Co. of N.Z. v. Inwood, [1946] 65 N.Z.L.R. 614, 624 (Ct. App.)). After noting that the formalities of will execution are designed to prevent fraud and error, the majority nevertheless concluded that since there was no possibility of fraud in the case at bar, a refusal to admit the will to probate merely would serve to expand formalism without any corresponding benefit. *In re* Snide, 52 N.Y.2d at 196-97, 418 N.E.2d at 657-58, 437 N.Y.S.2d at 64-65. Apparently directing courts to concentrate on substance rather than form, the *Snide* Court reversed New York's longstanding tradition of rigid formalism. Comment, *Mistakenly Signed Reciprocal Wills: A Change in Tradition After* In re Snide, 67 IOWA L. REV. 205, 205-06 (1981); *see In re* Will of Egner, 112 N.Y.S.2d 568, 569 (Sur. Ct. Suffolk County 1952); *In re* Will of Cutler, 58 N.Y.S.2d 604, 605 (Sur. Ct. Kings County 1945); Nelson v. McDonald, 61 Hun 406, 409, 16 N.Y.S. 273, 274 (Sup. Ct. Gen. T. 4th Dep't 1891).

[84] *See In re* Will of Hargett, 193 Misc. 332, 333-34, 84 N.Y.S.2d 450, 451-52 (Sur. Ct. N.Y. County 1948); *In re* Will of Reedy, 64 N.Y.S.2d 779, 780 (Sur. Ct. Westchester County 1946); *In re* Estate of Breckwoldt, 170 Misc. 883, 886-88, 11 N.Y.S.2d 486, 489-91 (Sur. Ct. Kings County 1939). Although the most widely used method of establishing the contents of a lost will is through the testimony of the attorney-draftsman and the submission of a copy of the original instrument, a will's substantive terms also may be proved by any two witnesses who have seen and read the will or who merely heard the will recited in the presence of the decedent. *See In re* Estate of Mussacchio, 146 Misc. 626, 627-28, 262 N.Y.S. 616, 617-18 (Sur. Ct. Madison County 1933); *In re* Estate of Humiston, 128 Misc. 71, 72-73, 218 N.Y.S. 234, 235-36 (Sur. Ct. Oneida County 1926). When the provisions of a will are sought to be established in the latter fashion, it is unconditionally required that the witnesses testify as to the entire substance of the will because if the will eventually is admitted to probate, their testimony may be incorporated into the decree. *See In re* Estate of Garrahy, N.Y.L.J., Oct. 7, 1981, at 11, col. 4 (Sur. Ct. Bronx County); *In re* Estate of Graeber, 53 Misc. 2d 640, 641, 279 N.Y.S.2d 429, 430 (Sur. Ct. Erie County 1967); *In re* Estate of Mussacchio, 146 Misc. at 627-28, 262 N.Y.S. at 617.

[85] When a will is lost or destroyed, certain evidentiary rules create obstacles to the

To afford the proponent of a will a realistic opportunity to carry his burden of proof, therefore, it is suggested that the copy itself should be admissible to refresh the recollection of the witness as, analogously, a document is received into evidence if it qualifies as past recollection recorded.[86]

In addition, the *Kleefeld* decision, requiring that a witness' testimony must independently establish the contents of a missing will, appears necessary to prevent fraudulent wills from being admitted to probate.[87] Practically, this requirement can be circumvented, for if the testator properly executes a copy of the original will, the copy itself can be admitted to probate. This practice, however, should not be encouraged because it would necessitate the submission of all duly executed wills in a subsequent probate proceeding.[88] Thus, it is submitted that the rule of law represented by

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admission of the will to probate. Notably, CPLR 4519 (McKinney Supp. 1981-1982), commonly dubbed the Dead Man's Statute, bars any testimony concerning transactions with a deceased testator by a party interested in the outcome of the litigation. *Id.* Additionally, EPTL § 3-3.2 (1981) stipulates that any beneficial disposition or appointment of property made to an attesting witness to a will is void unless there are, at the time of execution, at least two other attesting witnesses who will not receive a beneficial interest. *Id.* § 3-3.2(a)(1).

[86] *See, e.g.*, McCarthy v. Meaney, 183 N.Y. 190, 193, 76 N.E. 36, 37 (1905); Howard v. McDonough, 77 N.Y. 592, 593-94 (1879); Huff v. Bennett, 6 N.Y. 337, 338 (1852); People v. Raja, 77 App. Div. 2d 322, 325, 433 N.Y.S.2d 200, 202-03 (2d Dep't 1980); People v. Capreo, 25 App. Div. 2d 145, 150, 268 N.Y.S.2d 70, 76 (2d Dep't), *aff'd*, 18 N.Y.2d 617, 219 N.E.2d 204, 272 N.Y.S.2d 385 (1966). *See generally* W. RICHARDSON, EVIDENCE § 466 (10th ed. J. Prince 1973). As stated by the Court of Appeals:

> [I]t is well settled, that [a witness] is permitted to assist his memory by the use of any written instrument, memorandum or entry in a book, and it is not necessary that such writing should have been made by the witness himself, or that it should be an original writing, provided, after inspecting it, he can speak to the facts from his own recollection.

Huff v. Bennett, 6 N.Y. at 338. If the witness' recollection is refreshed, the testimony of the witness becomes the evidence and the document itself retains no evidentiary value. *E.g.*, People v. Raja, 77 App. Div. 2d at 325-26, 433 N.Y.S.2d at 202; *see* W. RICHARDSON, *supra*, § 466, at 454. If, however, after reading the memorandum, the witness remains unable to testify as to its contents, the memo itself is admissible as substantive evidence as long as it can be established that the witness once had knowledge of the contents, and that the memorandum was made contemporaneously with the occurrence of the facts recited, and, additionally, the witness is able to swear that he believed the memorandum was accurate at the time it was made. People v. Capreo, 25 App. Div. 2d at 150, 268 N.Y.S.2d at 76.

[87] *See In re* Will of Mittelstaedt, 280 App. Div. 163, 165-67, 112 N.Y.S.2d 166, 168-69 (1st Dep't), *appeal dismissed*, 304 N.Y. 876, 109 N.E.2d 886 (1952); *In re* Will of Robinson, 257 App. Div. 405, 407, 13 N.Y.S.2d 324, 326-27 (4th Dep't 1939); *In re* Will of Leaven, 47 N.Y.S.2d 668, 669 (Sur. Ct. Westchester County 1944); *In re* Will of Field, 109 Misc. 409, 410-11, 178 N.Y.S. 778, 778-79 (Sur. Ct. Westchester County 1919); *In re* Will of Schofield, 72 Misc. 281, 283-86, 129 N.Y.S. 190, 192-93 (Sur. Ct. N.Y. County 1911).

[88] J. COX, J. ARENSON & S. MEDINA, *supra* note 63, ¶ 1407.01, at 14-103 (1981); 2A O. WARREN & G. MARKUSON, WARREN'S HEATON SURROGATES' COURTS, § 176, ¶ 2(d), at 31-15

the *Kleefeld* decision imposes a burden upon the proponent of a will that most often will prove fatal to the establishment of the proponent's case.

Louis J. Ragusa

DEVELOPMENTS IN NEW YORK LAW

Dismissal of action on Statute of Frauds and statute of limitations grounds is sufficiently close to merits to bar subsequent suit under doctrine of res judicata

The doctrine of res judicata prevents the relitigation of matters already judicially decided.[89] In practice, it operates to preclude

(6th ed. 1980); *see In re* Will of Robinson, 257 App. Div. 405, 407, 13 N.Y.S.2d 324, 326-27 (4th Dep't 1939); *In re* Will of Leaven, 47 N.Y.S.2d 668, 669 (Sur. Ct. Westchester County 1944); *In re* Will of Field, 109 Misc. 409, 410-11, 178 N.Y.S. 778, 778-79 (Sur. Ct. Westchester County 1919). One commentator has criticized vehemently the practice of executing copies of the original will, positing:

> [T]here should be but one original (executed) will which will be the ribbon copy of a typed will. That is the *only* instrument to be signed by the testator and the witnesses. Carbon or Xerox copies are not to be signed because executing them would mean multiple original wills, all of which would have to be produced and proved for probate.

J. Cox, J. ARENSON & S. MEDINA, *supra* note 63, ¶ 1407.01, at 14-103 (emphasis in original).

[89] The doctrine of res judicata is deeply embedded in our system of jurisprudence and is deemed to be an essential tenet of the legal systems of all civilized nations. 2 A. FREEMAN, THE LAW OF JUDGMENTS § 626 (5th ed. 1925); *see* Note, *Developments in the Law—Res Judicata,* 65 HARV. L. REV. 818, 820 (1952). *See generally* Millar, *The Premises of the Judgment as Res Judicata in Continental and Anglo-American Law,* 39 MICH. L. REV. 1 (1952). The doctrine is based upon the broad public policy that there should be an end to the litigation of a matter once it has been decided. Kromberg v. Kromberg, 56 App. Div. 2d 910, 912, 392 N.Y.S.2d 907, 909 (2d Dep't 1977), *aff'd,* 44 N.Y.2d 718, 376 N.E.2d 923, 405 N.Y.S.2d 451 (1978); Eissing Chem. Co. v. People's Nat'l Bank, 205 App. Div. 89, 91, 199 N.Y.S. 342, 344 (2d Dep't), *aff'd,* 237 N.Y. 532, 143 N.E. 731 (1923); 5 WK&M ¶ 5011.07, at 50-72; von Moschzisker, *Res Judicata,* 38 YALE L.J. 299, 299 (1929); *cf.* Note, *Collateral Estoppel in New York,* 36 N.Y.U.L. REV. 1158, 1159 (1961) (concerning collateral estoppel, "the dignity of the processes of law is attacked each time a party relitigates a matter that has once been decided"). Indeed, it has been noted that the interests of society are best served when a degree of finality is attached to an adjudicated dispute. A. FREEMAN, *supra,* § 626; *see* Weiner v. Greyhound Bus Co., 55 App. Div. 2d 189, 191, 389 N.Y.S.2d 884, 886 (2d Dep't 1976). *See also* 9 CARMODY-WAIT 2d § 63:197 (1966). Moreover, limiting litigation promotes peace and order in the community by creating "certainty in the relations of men." von Moschzisker, *supra,* at 303; *see* New York State Labor Relations Bd. v. Holland Laundry, Inc., 294 N.Y. 480, 493, 63 N.E.2d 68, 74 (1945).

Additionally, considerations of judicial economy dictate that repetitious litigation be avoided, Reilly v. Reid, 45 N.Y.2d 24, 28, 379 N.E.2d 172, 175, 407 N.Y.S.2d 645, 648 (1978), for it would be an impermissible burden on tribunals already facing crowded court calendars to allow a party "two days in court" in order to litigate a dispute twice, *see* von Moschzisker, *supra,* at 300; Note, *Collateral Estoppel in New York, supra,* at 1158-59. Res judicata