

# CPLR 603: Law of the Case Limits the Power to Sever Claims

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to enforce the alimony and support provisions of a Mexican divorce decree which had been incorporated into the decree from a New York-executed separation agreement. The defendant, a nondomiciliary, had been personally served in New Jersey. The court held that the enforcement proceeding arose "directly out of the activity of the parties in the foreign jurisdiction and only remotely out of the business transacted in New York, i.e., execution of the separation agreement."<sup>43</sup>

The *Carmichael* court stressed the necessity of an immediate nexus between the business transacted in New York and the suit; its decision represents a refusal to loosen the jurisdictional prerequisites as to marital decrees.

#### ARTICLE 6 — JOINDER OF CLAIMS, CONSOLIDATION AND SEVERANCE

*CPLR 603: Law of the case limits the power to sever claims.*

Judicial discretion in granting a severance is limited by the doctrine of the law of the case.<sup>44</sup> By refusing severance a court establishes the law of the case and thereby binds other courts of coordinate jurisdiction.<sup>45</sup> Only an intervening new fact would permit another court to decide otherwise.

In *Dain & Dill, Inc. v. Betterton*,<sup>46</sup> the Supreme Court, Putnam County, severed three actions previously consolidated at special term. The Appellate Division, Second Department, reversed, stating that for a court of coordinate jurisdiction to ignore the law of the case was to "arrogate to [itself] powers of appellate review."<sup>47</sup>

#### ARTICLE 11 — POOR PERSONS

*CPLR 1102: Departments divided as to responsibility for indigents' publication costs.*

In *Boddie v. Connecticut*,<sup>48</sup> the United States Supreme Court held that due process requires the removal of state monetary bars

<sup>43</sup> *Id.*, 333 N.Y.S.2d at 812.

<sup>44</sup> "The 'law of the case' ordinarily signifies a proposition of law that has been litigated and is deemed concluded by virtue of a previous *judicial determination* in the same case . . ." 7 WK&M ¶ 5501.11.

<sup>45</sup> See *George W. Collins, Inc. v. Olsker-McLain Indus., Inc.*, 22 App. Div. 2d 485, 257 N.Y.S.2d 201 (4th Dep't 1965), discussed in *The Biannual Survey*, 40 Sr. JOHN'S L. REV. 122, 148 (1965). "Setting aside the judicial act of one judge by another of co-ordinate jurisdiction is avoided, wherever possible, as not conducive to the orderly administration of justice." *United Press Ass'ns v. Valente*, 281 App. Div. 395, 398, 120 N.Y.S.2d 174, 178 (1st Dep't 1953), *aff'd*, 308 N.Y. 71, 123 N.E.2d 888 (1954).

<sup>46</sup> 39 App. Div. 2d 939, 333 N.Y.S.2d 237 (2d Dep't 1972) (mem.).

<sup>47</sup> *Id.*, 333 N.Y.S.2d at 238, citing *George W. Collins, Inc. v. Olsker-McLain Indus., Inc.*, 22 App. Div. 2d 485, 489, 257 N.Y.S.2d 201, 205 (4th Dep't 1965).

<sup>48</sup> 401 U.S. 371 (1971), noted in 18 CATH. LAW. 67 (1972); 10 DUQUESNE L. REV. 123 (1971); 17 S.D.L. REV. 269 (1972).