

Collateral Estoppel: Court of Appeals Affirms that Prior Judgment Establishing Freedom from Negligence Does Not Establish Freedom from Contributory Negligence

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sible appeal.⁹² Failure to utilize the informal procedure is not a waiver of the right to a formal ruling.

ARTICLE 32 — ACCELERATED JUDGMENT

Collateral Estoppel: Court of Appeals affirms that prior judgment establishing freedom from negligence does not establish freedom from contributory negligence.

In *Nesbitt v. Nimmich*,⁹³ the Court of Appeals recently affirmed without opinion an Appellate Division, Second Department, decision which held that the doctrine of collateral estoppel does not operate to establish the plaintiff's freedom from contributory negligence where his freedom from negligence as a defendant was determined in a prior action. The case involved a personal injury action between parties who were co-defendants in the prior suit. The Second Department's refusal to grant the plaintiff's motion for summary judgment was based on the difference in the burden of proof accompanying the movant's change in status from defendant to plaintiff. The plaintiff's inability to establish the defendant's negligence in the prior action should not permit the inference that the defendant can overcome his burden of proving freedom from contributory negligence in a subsequent action in which he is the plaintiff.

ARTICLE 71 — RECOVERY OF CHATTEL

CPLR 7102: Due process protects all types of property.

Since the 1969 Supreme Court decision in *Sniadach v. Family Finance Corp.*,⁹⁴ there have been important developments in replevin law. In *Sniadach*, the Court set the direction by declaring that a hearing or an opportunity to defend a replevin action before the garnishment of one's salary was necessary to satisfy the requirements of due process. While *Sniadach* was concerned with wages, a "specialized type of property"⁹⁵ the deprivation of which may cause great personal

⁹² 7B MCKINNEY'S CPLR 3124, commentary at 630 (1970), citing *Tri-State Pipe Lines Corp. v. Sinclair Ref. Co.*, 26 App. Div. 2d 285, 273 N.Y.S.2d 976 (1st Dep't 1966), discussed in *The Quarterly Survey*, 42 ST. JOHN'S L. REV. 128, 142 (1967).

⁹³ 30 N.Y.2d 622, 282 N.E.2d 328, 331 N.Y.S.2d 438 (1972), *aff'g mem.* 34 App. Div. 2d 958, 312 N.Y.S.2d 766 (2d Dep't 1970) (mem.), discussed in *The Quarterly Survey*, 45 ST. JOHN'S L. REV. 500, 521 (1971).

⁹⁴ 395 U.S. 337 (1969). For extended discussion of *Sniadach*, see Note, *Provisional Remedies in New York Reappraised Under Sniadach v. Family Finance Corp.: A Constitutional Fly in the Creditor's Ointment*, 34 ALBANY L. REV. 426, 433 (1970); Note, *Some Implications of Sniadach*, 70 COLUM. L. REV. 942 (1970); *The Quarterly Survey*, 46 ST. JOHN'S L. REV. 355, 379 (1971).

⁹⁵ 395 U.S. at 340.