

CPLR 511(b): The County Specified as Proper by Defendant Must in Fact Be Proper

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it violates the due process clause.⁵⁰ The court limited the damages allowable to the plaintiff before his cause of action was tried. If the proof which the court required did not meet a certain objective standard, such as that required for summary judgment, the disposition was arbitrary and therefore contrary to due process. A certain standard of proof recognizable at law must be adduced to validate such a decision. Thus, the *Haas* case may be challenged under the due process and equal protection clauses of the fourteenth amendment.

ARTICLE 5 — VENUE

CPLR 511(b): The county specified as proper by defendant must in fact be proper.

A plaintiff has the right, in the first instance, to choose the venue of the action. CPLR 511(b) provides, however, that if the plaintiff's choice is improper, the defendant may move to change the venue to a county that "he specifies as proper." Will the county specified by the defendant as proper be deemed so without regard to its propriety in fact?

A domestic corporation stated in its certificate of incorporation that Queens County was to be its principal place of business. Thereafter, it moved its facilities to Westchester County. Nevertheless, for venue purposes as prescribed in CPLR 503(c), the corporation is deemed to be a resident of Queens County and not Westchester County.⁵¹ The defendant formally surrendered its authority to do business in New York prior to the commencement of this action, by filing the requisite certificate.⁵² As a foreign corporation, it had no residence in New York for venue purposes.⁵³ The only proper place for this action, therefore, was the plaintiff's residence, Queens County.⁵⁴ Nevertheless, the plaintiff brought suit against the defendant in Westchester County. The defendant moved for a change of venue and, pursuant to CPLR 511(b), specified New York County as a proper county. Its contention was that it complied with the letter of the law in that it was only required to name a county that it "specifies as proper,"⁵⁵ the

⁵⁰ "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). For a thorough discussion of the requirements of procedural due process, see *Goldberg v. Kelly*, 397 U.S. 254 (1970).

⁵¹ See *General Precision, Inc. v. Ametek, Inc.*, 45 Misc. 2d 451, 257 N.Y.S.2d 120 (Sup. Ct. Westchester County), discussed in *The Biannual Survey*, 40 ST. JOHN'S L. REV. 122, 143 (1965), *aff'd*, 24 App. Div. 2d 757, 263 N.Y.S.2d 470 (2d Dep't 1965) (mem.), discussed in *The Quarterly Survey*, 41 ST. JOHN'S L. REV. 121, 135 (1966); 7B MCKINNEY'S CPLR 503, *supp. commentary* at 12 (1965).

⁵² N.Y. BUS. CORP. LAW § 1310 (McKinney 1963).

⁵³ Cf. 7B MCKINNEY'S CPLR 503, *commentary* at 6 (1963).

⁵⁴ CPLR 503(a).

⁵⁵ CPLR 511(b).

county need not be proper in fact. In *Reliable Displays Corp. v. Maro Industries, Inc.*,⁵⁶ the Supreme Court, Westchester County, rejected this interpretation of the statute.⁵⁷ It held that the county specified by the defendant must also in fact be a proper one. The court added that the only proper place of venue was Queens County, but inasmuch as the defendant made no attempt to transfer the case there, the court declined to so order.⁵⁸

The decision of the court is clearly correct. If a plaintiff chooses an improper venue, the defendant should not be permitted to change the venue to an equally improper county. The defendant's remedy should be limited to transferring the case to a proper county.

ARTICLE 11 — POOR PERSONS

CPLR 1102: City is not responsible for costs of publication in matrimonial action.

The costs involved in civil proceedings can operate as an effective bar to an indigent seeking judicial relief. The Legislature has attempted to meet this problem through the passage of in forma pauperis legislation. These statutes are usually limited in scope. In recent years, however, the courts have expanded the effect of these statutes by construing them liberally and have provided additional protection for the poor by similar construction of the Constitution. The courts have allowed an indigent to proceed with his action on the grounds of due process and equal protection. The costs are usually borne by the public treasury.

While the indigent's right of access to the courts has been definitively acknowledged, less than clear-cut guidelines have been promulgated for the resolution of some of the practical problems which have been created in the process. A recent Appellate Division, First Department, decision underscores this problem. In *Jackson v. Jackson*,⁵⁹ a divorce action, the trial court had "direct[ed] the Treasurer of the City of New York to pay the costs and expenses of service by publication. . . ."⁶⁰ The appellate division reversed, declaring that

[n]o provision of the law has been called to our attention which authorizes the City to make such payment in a matrimonial action in behalf of an indigent plaintiff.⁶¹

Prior to this decision, it had become evident that "the burden of

⁵⁶ 67 Misc. 2d 747, 325 N.Y.S.2d 616 (Sup. Ct. Westchester County 1971).

⁵⁷ *Id.* at 748, 325 N.Y.S.2d at 618.

⁵⁸ *Id.* See 7B MCKINNEY'S CPLR 509, commentary at 42 (1963).

⁵⁹ 37 App. Div. 2d 953, 326 N.Y.S.2d 224 (1st Dep't 1971).

⁶⁰ *Id.* at —, 326 N.Y.S.2d at 225.

⁶¹ *Id.* An argument to the contrary can be made. CPLR 1102(b) provides that: