

UJCA 1704: Once Filed, Justice's Return Is a Conclusive Record of Proceeding Below

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UNIFORM JUSTICE COURT ACT

UJCA 1704: Once filed, justice's return is a conclusive record of proceedings below.

UJCA 1704 establishes the procedure for procuring a record suitable for appeal of proceedings held before a justice of the peace. If no stenographic minutes were taken, the clerk or justice must prepare minutes of the proceeding detailing the testimony and the court's rulings on disputed evidence and testimony. In addition, any exception taken during the proceeding must be indicated. Thereafter, the statement is "settled" by an adversary examination to check its accuracy. Thus authenticated, the statement, plus the pleadings, judgment and opinion, are filed with the appellate court as the justice's return.

In *Workman v. Bolen*,²⁴⁹ the Sullivan County Court held that where a return does not contain an objection to an incomplete charge, this objection is foreclosed on appeal.²⁵⁰ The appellant therein had not attempted to settle the justice's return to show that such an objection had been made, thereby "admitt[ing] the sufficiency and correctness of the return."²⁵¹ The appeal was therefore dismissed.

Both the CPLR²⁵² and decisional law²⁵³ deem a filed return a conclusive record of town or village proceedings. The safeguards provided in the instant statute sufficiently protect the litigants' interests by permitting them to inspect and contest the records before filing. Here, however, these safeguards were ignored. Clearly, this rule is necessary, but the same result might have been attained by a remand for resettlement of the return, with less hardship on the appellant.

NEW YORK CITY CIVIL COURT ACT

CCA 306: Civil court changes venue sua sponte with caveat to the bar.

The procedure for change of venue in the Civil Court of New York City is found in CCA 306, which provides that when venue is improper the court may of its own motion transfer the action to the

²⁴⁹ *Workman v. Bolen*, 67 Misc. 2d 957, 326 N.Y.S.2d 811 (Sullivan County Ct. 1971).

²⁵⁰ *Id.* at 966, 326 N.Y.S.2d at 821, citing CPLR 4017, 5501(a).

²⁵¹ *Id.* at 966-67, 326 N.Y.S.2d at 821, citing *People v. Mason*, 307 N.Y. 570, 122 N.E.2d 916 (1954) (return of criminal trial which was uncontested prior to appeal is conclusive record of the proceedings below).

²⁵² CPLR 4017, 5501(a). UJCA 2102 provides that the CPLR is applicable to village or town proceedings insofar as it is consistent with the Act. Moreover, UJCA 1703 expressly provides that article 55 of the CPLR is applicable to appeals except where the UJCA provides otherwise.

²⁵³ *See, e.g., People v. Eastman*, 46 Misc. 2d 674, 260 N.Y.S.2d 498 (Sup. Ct. Monroe County 1965) (decided under a similar provision of the Justice Court Act, now superseded by the UJCA).