

# CPLR 4111(c): Case Arising Under CPA Illustrates Utility of CPLR Provision

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

### Recommended Citation

St. John's Law Review (1970) "CPLR 4111(c): Case Arising Under CPA Illustrates Utility of CPLR Provision," *St. John's Law Review*: Vol. 44 : No. 4 , Article 16.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol44/iss4/16>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [lasalar@stjohns.edu](mailto:lasalar@stjohns.edu).

## ARTICLE 41—TRIAL BY JURY

*CPLR 4111(c): Case arising under CPA illustrates utility of CPLR provision.*

In *Kennard v. Welded Tank & Construction Co.*,<sup>159</sup> an action was commenced against the manufacturer of a water tank, Welded Tank & Construction Co. (Welded), and a component part manufacturer, Colorado Fuel & Iron Co. (C.F. & I.), for injuries resulting from the explosion of Welded's water tank. Welded thereupon cross-claimed against C.F. & I. alleging breach of warranty. Subsequently, the jury returned a general verdict against both defendants on plaintiff's negligence claim, but returned special findings on the cross-claim that C.F. & I. was not negligent.<sup>160</sup> In response to motions by the plaintiff and Welded to resubmit the case to the jury, or, in the alternative, to order a new trial, the court, acceding to the mandatory language of CPA 459,<sup>161</sup> resolved the inconsistencies in favor of the special findings, and dismissed the plaintiff's claim as well as Welded's cross-claim against C.F. & I. On appeal, a divided court held that the refusal of the lower court to resubmit the case to the jury or order a new trial was not reversible error.

In drafting CPLR 4111(c), the legislature vested the trial court with the discretion to direct the jury to further consider its answers or order a new trial in lieu of directing a judgment in accordance with the special findings.<sup>162</sup> Hence, as noted by the Court of Appeals,<sup>163</sup> the problems presented by the *Kennard* facts should not recur under the CPLR.

## ARTICLE 71—RECOVERY OF CHATTEL

*CPLR 7102: Court vacates replevin since summons and complaint was not promptly served upon defendant in possession.*

Ancillary to an action for the recovery of a chattel, CPLR 7102 authorizes seizure of the chattel by a sheriff on behalf of the plaintiff

---

<sup>159</sup> 26 Misc. 2d 1000, 209 N.Y.S.2d 479 (Sup. Ct. Nassau County 1961), *aff'd*, 27 App. Div. 2d 578, 277 N.Y.S.2d 817 (2d Dep't 1966), *aff'd*, 25 N.Y.2d 324, 253 N.E.2d 197, 305 N.Y.S.2d 477 (1969).

<sup>160</sup> The interrogatories were submitted to the jury in order to facilitate the trial court's determination of third-party actions instituted by Welded against C.F. & I. Statutory authorization for such interrogatories was provided by CPA 193-a(5), and is now covered by CPLR 4111.

<sup>161</sup> CPA 459 directed that "where a special finding is inconsistent with a general verdict, the former controls the latter and the court must render judgment accordingly."

<sup>162</sup> CPLR 4111(c). See SECOND REPORT 235.

<sup>163</sup> *Kennard v. Welded Tank & Constr. Co.*, 25 N.Y.2d 324, 328, 253 N.E.2d 197, 199, 305 N.Y.S.2d 477, 480 (1969).