

CPLR 6214(d): Special Proceeding May Be Commenced Against Defendant As Well As Garnishee To Compel Payment to Sheriff

St. John's Law Review

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

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 selbyc@stjohns.edu.

damages. The court distinguished cases not allowing appeals in single trials, *i.e.*, where "the issue of liability is first determined by triers who promptly go on to hear the issue of damages,"¹⁴⁸ emphasizing that the decision was limited to split trials.

Thus, in the interests of uniformity in appellate practice and in the administration of justice, the appellate division, second department, reinforces the position taken by the first department. In the second department, an appeal will now lie as of right regardless of whether the determination was made by a court or a jury or whether the appeal is made from an interlocutory judgment or an order.

ARTICLE 62 — ATTACHMENT

CPLR 6214(d): Special proceeding may be commenced against defendant as well as garnishee to compel payment to sheriff.

CPLR 6214(d) provides that where an order of attachment has been levied upon property or debts a special proceeding may be commenced against the *garnishee* by the plaintiff to compel the payment of the debt to the sheriff.

In *Hom-De-Lite Realty Corp. v. Trimboli*,¹⁴⁹ plaintiff initiated a proceeding to compel the *defendant*, as distinguished from the garnishee, to pay a sum of money to the sheriff, upon which money a levy had been previously made by an order of attachment. The court held that, although CPLR 6214(d) does not expressly provide that the plaintiff has such a remedy against the defendant in the action, other related statutory provisions clearly imply that the remedy is available against the defendant.¹⁵⁰

It appears that this construction of the statute is in accordance with the legislature's intent in enacting CPLR 6214(d).¹⁵¹ Since related sections such as CPLR 6202 provide that where the term "judgment debtor" is referred to in certain sections of the CPLR, it should be construed to mean "defendant." It is a reasonable inference that "garnishee" should also be construed to mean "defendant." This is especially true when the literal construction of the terms results in unnecessary hardship.¹⁵²

¹⁴⁸ *Id.* at 37, 266 N.Y.S.2d at 196.

¹⁴⁹ 28 App. Div. 2d 1127, 284 N.Y.S.2d 141 (2d Dep't 1967).

¹⁵⁰ See CPLR 5225, 6202.

¹⁵¹ See MCKINNEY'S STATUTES, Bk. 1, § 111 at 180, in which it is stated that remedial statutes should receive a liberal construction: "[I]t is particularly proper to extend their operation to cases within the intent of the lawmakers though not covered by the exact meaning of their language."

¹⁵² *Id.*