St. John's Law Review

Volume 43
Number 2 *Volume 43, October 1968, Number 2*

Article 16

N.Y. Const., Art. VI, § 19(a): Consent of Parties Not Needed To Effect Transfer to Lower Court

St. John's Law Review

The dissent, speaking through Judge Jasen, warned of the danger of forum-shopping, which the majority had found unlikely because of the eased transfer provisions of the amended judiciary article.[43] Another point emphasized by the minority was that the majority's interpretation usurped the Legislature's function to decide whether or not to deprive specialized courts of their exclusive jurisdiction.

N.Y. Const. art. VI, § 19(a): Consent of parties not needed to effect transfer to lower court.

The possibility of transfer of an action to a court with lower monetary jurisdiction is a valuable factor in discouraging plaintiffs from overstating their claims for damages, CPLR 325(c) provides for removal on consent to a court of limited jurisdiction.

> Where it appears that the amount of damages sustained are less than demanded, and a lower court would have had jurisdiction of the action but for the amount of damages demanded, the court in which an action is pending may remove it to the lower court upon reduction of the amount of damages demanded to a sum within the jurisdictional limits of the lower court and upon consent of all parties to the action other than a defendant who has interposed no counterclaim and over whom the lower court would have had jurisdiction if the action had originally been commenced there. . . .

However, section 19(a) of the amended judiciary article of the New York Constitution makes no mention of either the requirement of showing excessive damages claimed, or the method of transfer by consent of parties. The only requirement of the constitutional transfer provision is that the lower court have "jurisdiction over the classes of persons named as parties." [44] A recent case, *Hesse v. Hrubsa*,[45] discussed the question raised by the second change, *i.e.*, whether consent of the parties remains a valid method of obtaining transfer.

Two transfers were involved—one from the supreme court to the county court, and one from the county court to the district court. The defendant, a non-resident of Suffolk County, had been served outside of that county, preventing either the county or district court from taking jurisdiction.[46] However, when the transfers were actually made, the defendant appeared without protest and

---

for such a distinction since it is based on the premise that the Legislature cannot withdraw any form of action, even if statutorily created, from the jurisdiction of the supreme court.

[43] N.Y. CONST. art. VI, § 19.

[44] N.Y. CONST. art. VI, § 19(a).

[45] 55 Misc. 2d 610, 286 N.Y.S.2d 183 (Dist. Ct. Suffolk County 1968).

[46] N.Y. JUDICIARY LAW § 190(3).

defended on the merits in the district court. He attacked the transfers only after losing the case there.

The court found that the constitutional provision superseded the CPLR requirement, and did eliminate the method of transfer by consent. In spite of the fact that the original service would not have conferred jurisdiction on the lower courts, it was held that since the defendant appeared and defended without objection, he became one of the classes of persons over whom the court had personal jurisdiction.[47]

N.Y. Const. art. VI, § 19(a): Consent of surrogate not needed to effect transfer.

Under the CPLR,[48] the supreme court may transfer an action pending before it to the surrogate's court if the case involves a decedent's estate within the latter court's jurisdiction. A prerequisite for this transfer has been the consent of the surrogate to receive the action. Although this consent was usually obtainable, when the facilitation of litigation[49] or the prevention of calendar delays in the supreme court[50] warranted transfer, it remained discretionary with the surrogate.[51]

Recently, the appellate division, first department, in *Garland v. Raunhein*,[52] indicated that the general transfer provision of the amended judiciary article of the Constitution[53] has, by failure to mention consent as a requirement, eliminated it. After stating that the CPLR transfer section had been superseded by the constitutional provision, the court ordered the transfer of a partition action brought in the supreme court to the surrogate's court without any mention of requesting or obtaining the surrogate's consent.

Although this decision seems warranted by the language of the amendment, in a few instances the consent of the surrogate has been sought on a voluntary basis.[54] Moreover, consent of the surrogate is still needed for the transfer of cases from the supreme court in one department to a surrogate's court in another, since

---

[47] Martin v. Farrell, 47 Misc. 2d 126, 261 N.Y.S.2d 820 (County Ct. Essex County 1965).

[48] CPLR 325(d). Parallel provisions appear in SCPA § 209 and § 501.

[49] Shearn v. Lord, 16 Misc. 2d 224, 156 N.Y.S.2d 32 (Sup. Ct. N.Y. County 1956), *aff'd*, 3 App. Div. 2d 823, 161 N.Y.S.2d 22 (1st Dep't 1957).

[50] *See In re* Mayer, 158 N.Y.L.J. 13 (Surr. Ct. Westchester County July 18, 1967).

[51] *In re* Laedke, 28 Misc. 2d 651, 216 N.Y.S.2d 180 (Surr. Ct. Nassau County 1961).

[52] 29 App. Div. 2d 383, 288 N.Y.S.2d 417 (1st Dep't 1968).

[53] N.Y. CONST. art. VI, § 19(a). This result was predicted by the commentator in 58A MCKINNEY'S SCPA § 209, commentary 210-11 (1967).

[54] *In re* Suchoff, 55 Misc. 2d 284, 285 N.Y.S.2d 134 (Surr. Ct. Nassau County 1967); *In re* Breen, 45 Misc. 2d 374, 256 N.Y.S.2d 770 (Surr. Ct. Richmond County 1965).