CPLR 302(a)(1): Husband's Implied Promise To Pay for Necessaries Is Not a Transaction of Business

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second action the defense contended that the prior dismissal consti-
tuted a dismissal for "neglect to prosecute" thus rendering the
six month saving period provided by CPLR 205(a) unavailable.
In holding against this contention the court stated that the record
did not show, nor did the trial justice intend, the consequences of
a dismissal for neglect to prosecute.
When counsel has acted in good faith and has not willfully or
deliberately refused to go to trial, the potentially disastrous effect
of a dismissal after the statute of limitations has run will be allevi-
ated by the provisions of 205(a).

ARTICLE 3—JURISDICTION AND SERVICE, APPEARANCE AND
CHOICE OF COURT

CPLR 302(a)(1): Husband's implied promise to pay for
necessaries is not a transaction of business.

In Inkelas v. Inkelas, an action for support and necessaries,
plaintiff-wife attempted to secure personal jurisdiction over her
non-resident husband on the basis of an implied promise to pay for
necessaries. Plaintiff contended that, since she resided in New
York when the promise was made requiring her husband to per-
form here, the obligation constituted her an agent to make pur-
chases on his behalf. Each purchase, it was argued, constituted a
transaction of business under CPLR 302(a)(1).

The Supreme Court, Bronx County, rejected plaintiff's argu-
ment and dismissed for lack of jurisdiction. Reasoning that plain-
tiff's husband had not committed any "purposeful act" within New
York, the court distinguished those situations in which a separation
agreement is executed in New
York. While the rationale of Inkelas appears to be sound, its result
is contrary to Venizelos v. Venizelos, recently decided by the
appellate division, second department. Unfortunately, however, the
court in Venizelos does not specifically identify the statute it is
invoking to supply jurisdictional basis. In view of the confusion
created, it would be helpful to watch for further developments in
the Venizelos case.

5 The "purposeful act" criteria was first promulgated in Hanson v.
Denkla, 357 U.S. 235 (1958). It was applied to 302 in Longines-Wittnauer
Watch Co. v. Barnes & Reinecke, Inc., 15 N.Y.2d 443, 295 N.E.2d 68, 261
N.Y.S.2d 8 (1965) and re-applied in McKee Elec. Co. v. Rauland-Borg
36 (2d Dep't 1967).
7 30 App. Div. 2d 856, 293 N.Y.S.2d 20 (2d Dep't 1968). See The
Quarterly Survey of New York Practice, 43 St. John's L. Rev. 498, 503