

CPLR 320(c): Amendment

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gestions those which will form one means "reasonably calculated"⁹⁹ to apprise the defendant of the pendency of the action.

CPLR 314(1): Expanding in rem bases.

In *Chittenden v. Chittenden*,¹⁰⁰ an action to have a Mexican divorce decree declared invalid, the supreme court held that service by publication could be made under CPLR 314(1)¹⁰¹ upon a non-resident who married the plaintiff's alleged husband following such decree.

The practitioner should note that the expanded concept of interest in the marital res found in the CPA¹⁰² has been carried over into the CPLR. Since the plaintiff was a New York resident, this state undoubtedly had jurisdiction over the res. The husband and the wife are usually the parties deemed to have an interest in the marital res. However, it is submitted that the holding in *Chittenden* is in accord with the liberal spirit of the CPLR,¹⁰³ and is realistic under the facts of the case. Since a declaration of the invalidity of the Mexican divorce decree would re-establish the validity of the first marriage, thereby rendering the second marriage invalid, the defendant does have a very real interest in the marital res.

CPLR 320(c): Amendment.

Prior to 1965, CPLR 320(c) provided that any appearance of a defendant served without the state under CPLR 314 conferred personal jurisdiction unless an objection to jurisdiction was asserted under CPLR 3211(a) at the time of appearance. As a result of the phrase "at the time of appearance," a conflict existed between CPLR 320(c) and CPLR 3211(e) since the latter offers the option of objecting by motion or answer irrespective of whether an appearance has been made. The legislature in 1965 deleted this phrase and the conflict no longer exists.

The result is that a defendant can serve a notice of appearance without fear that he thereby forfeits his jurisdictional objection. As long as he is able thereafter to make a CPLR 3211 motion, he may, in that latter motion, include his jurisdictional objection. However, the practitioner should be aware of the danger of waiving

⁹⁹ *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

¹⁰⁰ 46 Misc. 2d 347, 259 N.Y.S.2d 738 (Sup. Ct. Monroe County 1965).

¹⁰¹ "Service may be made without the state by any person authorized by section 313 in the same manner as service is made within the state:

1. in a matrimonial action"

¹⁰² CPA § 232.

¹⁰³ CPLR 104.

his jurisdictional objection under the 1965 amendment to CPLR 3211(e).¹⁰⁴

CPLR 325: Alternate bases for removal.

Frankel Associates, Inc. v. Dun & Bradstreet, Inc.,¹⁰⁵ was an action originally brought in supreme court due to the monetary limitation of the City Court of New York. Upon merger of the city court into the newly created civil court, with its increased monetary jurisdiction, the plaintiff applied for removal to that court. Although the consent of the defendant was not sought, the court held that CPLR 325(a) or (c) permitted the removal. Even if the defendant's consent were necessary to effect removal under CPLR 325, the court stated that removal could nevertheless be ordered under Article VI, § 19(a) of the New York State Constitution.¹⁰⁶

In *Mather v. Ginsroe, Inc.*,¹⁰⁷ it was held that once a CPLR 325 removal has occurred, the transferor court under CPLR 326(b) has no further jurisdiction over motions or applications except for an appeal from the order of transfer. Any motion or application other than for such appeal must be made in the transferee court.

ARTICLE 5 — VENUE

CPLR 503(c): Residence of a foreign corporation.

General Precision, Inc. v. Ametek, Inc.,¹⁰⁸ involved a suit between two foreign corporations for breach of contract. Plaintiff laid venue in Westchester County declaring that all of its business within the state was transacted therein. In opposition to defendant's motion to change the venue to New York County, the plaintiff contended that even though its application for authority named New York County as the location of the corporate office, the corporation in fact had virtually no contact with that county and thus venue belonged in Westchester County.¹⁰⁹ In granting the defendant's motion, the court held that CPLR 503(c) when

¹⁰⁴ For a thorough discussion of this problem under CPLR 3211(e) see 7B MCKINNEY'S CPLR 3211, supp. commentary 92 (1965).

¹⁰⁵ 45 Misc. 2d 607, 257 N.Y.S.2d 555 (Sup. Ct. N.Y. County 1965).

¹⁰⁶ "The supreme court may transfer any action or proceeding, except one over which it shall have exclusive jurisdiction . . . to any other court having jurisdiction of the subject matter within the judicial department provided that such other court has jurisdiction over the classes of persons named as parties . . ."

¹⁰⁷ 45 Misc. 2d 674, 257 N.Y.S.2d 472 (Sup. Ct. N.Y. County 1965).

¹⁰⁸ 45 Misc. 2d 451, 257 N.Y.S.2d 120 (Sup. Ct. Westchester County 1965).

¹⁰⁹ *Id.* at 452, 257 N.Y.S.2d at 122.