UDCA § 204: District Court Has Jurisdiction to Determine Right to Possession Although Issue of Title Is Raised

St. John's Law Review
of the term "difficult case" and the question must necessarily be determined on a case-by-case basis.

UDCA § 204: District court has jurisdiction to determine right to possession although issue of title is raised.

Mohar Realty Co. v. Smith involved a summary proceeding, in the District Court of Suffolk County, to recover possession of realty. Defendant, raising title as an issue, obtained a dismissal on the ground of lack of subject matter jurisdiction. The supreme court unanimously reversed, holding that the district court has jurisdiction to entertain summary proceedings to recover possession of real property and that the defense involving a question of title did not divest the court of jurisdiction.

Of course, the district courts have no jurisdiction over real property actions, including actions to determine title. But the courts do have jurisdiction of summary proceedings concerning real property and they are not ousted from their jurisdiction merely because one of the parties raises an issue of title. When questions of title are raised in summary proceedings, the courts only have to determine whether the relationship of landlord and tenant exists, and then they can award possession to the party entitled to the premises. In such cases, title is considered only collaterally in issue and the courts may pass upon it to determine which party has the present right to possession. As long as the main issue, therefore, concerns the recovery of possession, the courts also may pass upon the collateral issue of title.

CCA § 212: Reinstatement of evicted tenant.

Section 212 of the New York City Civil Court Act states: "in the exercise of its jurisdiction the court shall have all of the powers that the supreme court would have in like actions and proceedings." This provision was not intended to increase or diminish the jurisdiction of the court. This construction, however,

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245 Addamo v. Scaturro, 41 Misc. 2d 60, 244 N.Y.S.2d 836 (N.Y. City Civ. Ct. 1963).
246 See 8 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 8303.12 (1965).
250 § 212, commentary 68 (1963).