

CPLR 5221: Enforcement Procedures Connected with Surrogate's Court Decrees Must Be Brought in Supreme or County Court

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finding of contempt on the ground that the judgment debtor was punished because of his disrespect and disobedience of a court order and not because he was unable to pay the judgment.

CPLR 5221: Enforcement procedures connected with surrogate's court decrees must be brought in supreme or county court.

In *In re Finkelstein's Estate*,²³⁵ an order was moved for directing a bank to release certain funds from an estate account. The bank argued that it could not release the money because a judgment creditor of the decedent had served a subpoena²³⁶ on it, which subpoena restrained it from paying out the money except (among other things) by court order. The question arose as to where such an order must be sought. It was sought here in the surrogate's court. The court denied the motion on the ground that the motion had to be made in the supreme or a county court.

The reason lies in CPLR 5221. That section provides, in subdivision (b), that all motions under article 52 must be made in a court specified in subdivision (a). The latter provides, in effect, that proceedings by way of enforcement of surrogate's court decrees must be instituted in supreme or a county court.²³⁷ Hence, the instant application had to be made to the latter court.

The practitioner should note these phenomena connected with the enforcement of judgments. While proceedings to enforce a judgment of the supreme and county courts, and certain other courts specified in CPLR 5221(a), may be brought in the same court which rendered the judgment, that is not so of the surrogate's court or of most of the state's lower courts. As to them, the enforcement procedures (other than mere execution) must be brought in the supreme or county court.²³⁸

²³⁵ 43 Misc. 2d 820, 252 N.Y.S.2d 499 (Surr. Ct. 1964).

²³⁶ Under the CPLR, the subpoena would be governed by CPLR 5223 and 5224, and would not effect a restraint. The restraint would be effected by the service of a restraining notice under CPLR 5222, a device entirely distinct from the subpoena under the CPLR. Under prior law, it was the subpoena which itself contained a restraint, and it was apparently that kind of subpoena which was used, perhaps erroneously, in the instant case. The matter is not of moment; the court treated the subpoena as if it were also a restraining notice under CPLR 5222 and disposed of the case accordingly.

²³⁷ The surrogate's court and proceedings in enforcement of its decrees are governed by paragraph 3 of CPLR 5221(a).

²³⁸ The lower courts which may entertain enforcement proceedings in connection with their own judgments are listed in paragraphs 1 and 2 of CPLR 5221(a). All other courts fall within paragraph 3 of that provision, and hence enforcement of their judgments must be sought in the supreme or a county court.