

June 1920

## Instituting Action in County in Which Neither Party Resides, in Order to Avoid Undesired Notoriety of Publicity--Not Necessarily Improper

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### Recommended Citation

*Instituting Action in County in Which Neither Party Resides, in Order to Avoid Undesired Notoriety of Publicity--Not Necessarily Improper*, 26 W. Va. L. Rev. (1920).

Available at: <https://researchrepository.wvu.edu/wvlr/vol26/iss4/9>

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QUESTION NO. 188.

INSTITUTING ACTION IN COUNTY IN WHICH NEITHER PARTY RESIDES, IN ORDER TO AVOID UNDESIRE NOTORIETY OR PUBLICITY.—NOT NECESSARILY IMPROPER. Section 417 of the New York Code of Civil Procedure provides that the summons in an action brought in the Supreme Court must contain the name of the County in which the plaintiff desires the trial.

Sections 982, 983 and 984 provide for the place of trial of certain designated actions, and under such provisions an action for divorce must be tried in the county in which one of the parties (if a resident) resided at the commencement of the suit, and section 985 provides that if the county designated in the complaint as the place of trial is not the proper county the action may notwithstanding be tried therein, unless the place of trial is changed to the proper county upon the demand of the defendant followed by the consent of the plaintiff, or the order of the court.

It appears that in consequence of the provisions of Section 985 a practice has grown up of designating Westchester County as the place of trial in divorce actions, though the parties reside in New York County, and, in the absence of the demand of the defendant, proceeding to trial in Westchester County, probably avoid undesirable publicity and notoriety incident to the filing of the papers and the conduct of the trial in New York County, where they are more likely to receive public attention through reference to them in the metropolitan dailies. The resort to Westchester County is (it is contended) justified as a matter of legal right, in the absence of demand from the defendant, as provided in the statute, and as desirable from the standpoint of the plaintiff for the purpose of avoiding unnecessary publicity and notoriety.

It is reported that the practice has recently been unfavorably commented upon by a Judge sitting in Westchester County in a case brought before him. In order that counsel and parties may be advised of the propriety or impropriety of this practice, assuming that it is within the legal rights of the plaintiff by reason of the provisions of Section 985 of the Code of Civil Procedure, will your Committee express an opinion on the subject?

*ANSWER NO. 188.*

The Committee does not feel that it is required to determine the public policy indicated by the legislation cited in the question, as it does not assume to construe statutes. In the absence of some further declaration of such policy, either legislative or judicial, it is not aware of any professional impropriety in the course suggested.