

The Survey of New York Practice Table of Contents

Editorial Board

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THE SURVEY OF NEW YORK PRACTICE

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INTRODUCTION*

In this second issue of Volume 65, *The Survey* examines a number of recent developments in New York law. In *Schneider v.*

* *The Survey* uses the following abbreviations:

New York Civil Practice Law and Rules (McKinney)	CPLR
New York Civil Practice Act	CPA
New York Criminal Procedure Law (McKinney)	CPL
New York Code of Criminal Procedure	CCP
Real Property Actions and Proceedings Law (McKinney)	RPAPL
Domestic Relations Law (McKinney)	DRL
Estates, Powers and Trusts Law (McKinney)	EPTL
General Business Law (McKinney)	GBL
General Municipal Law (McKinney)	GML
General Obligations Law (McKinney)	GOL
D. Siegel, <i>New York Practice</i> (1991)	SIEGEL
Weinstein, Korn & Miller, <i>New York Civil Practice</i> (1988)	WK&M
<i>The Survey of New York Practice</i>	<i>The Survey</i>

Lazard Freres & Co., the Appellate Division, First Department, held that investment bankers, who had negligently provided investment advice to the corporation's special committee regarding the sale of control of a corporation, could be held liable in negligence to the corporation's shareholders. The *Schneider* court rejected the application of traditional rules of corporate governance, and instead, relying on long-established agency principles, held that the shareholders could properly maintain a suit in negligence against the bankers for advice provided to the corporation's special committee, regardless of the fact that the bankers had dealt only with the corporation and never directly with the shareholders.

In *People v. Kern*, the New York Court of Appeals extended the rule established by the United States Supreme Court in *Batson v. Kentucky* prohibiting purposeful discrimination in the use of peremptory challenges to the defense's prosecution's use as well. The court premised its decision on the notion that the defense's exercise of racially discriminatory peremptories constituted state action in violation of the New York State Constitution. Of particular importance to the *Kern* court were the rights of New York citizens to participate in a juror selection process free from racial bias.

In *People v. Bing*, the New York Court of Appeals expressly overruled its prior decision in *People v. Bartolomeo*, and held that a suspect represented by counsel on a prior pending charge could waive his right to counsel in a later unrelated charge, even without the presence of his attorney. While fully recognizing the importance of the right to counsel, the *Bing* court determined that the *Bartolomeo* rule could not be justified when viewed in light of the cost such a rule exacts on society by hindering the effective investigation and prosecution of crime.

Finally, in *Glenn v. Hoteltron Systems Inc.*, the New York Court of Appeals declined to recognize an exception to section 626(e) of the BCL, requiring that pecuniary awards in shareholder derivative suits be turned over to the corporation rather than the shareholder-plaintiff, in the context of a two-person closely held corporation where the wrongdoer-shareholder would thereby be benefited by his wrongdoing. The court maintained that the anomalous result in such a situation was not sufficiently troubling to warrant the creation of a different rule in the closely held corporation context, and that the overriding concerns of potential creditors outweighed the absence of a deterrent effect in those circumstances.

The members of Volume 65 hope that the treatment of these and other cases in *The Survey* help to keep the New York bench and bar aware of recent developments in New York law.