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THE SURVEY OF NEW YORK PRACTICE

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INTRODUCTION*

In this second issue of Volume 59, *The Survey* examines a va-

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* The following abbreviations will be used uniformly throughout *The Survey*:

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

riety of issues of recent importance in New York law. Among the issues considered is a statutory amendment that divests the courts of New York of their discretion to dismiss an action on the ground of forum non conveniens in certain circumstances. Specifically, CPLR 327 has been amended to deny courts the discretion to dismiss an action for forum non conveniens when the parties have contractually provided for New York as their choice of law and choice of forum, and the underlying transaction is for a minimum of one million dollars.

In *Mead v. Bloom*, the Court of Appeals addressed GOL section 15-108. Affirming on the decision of the Appellate Division, Fourth Department, the Court held that, because the plaintiff settled with the defendant employer who was alleged to be only vicariously liable for the negligence of his employee, a third defendant who did not settle was entitled to have the judgment reduced by the employer's equitable share of the damages, rather than the amount of the settlement. In this manner, the Court chose not to construe the issue as an indemnification claim simply because an employer and employee were involved, which would have rendered GOL section 15-108 inoperable, but instead held that contribution rights — namely, those between the employer and the nonsettling defendant — were at issue.

In *Post v. 120 East End Avenue Corp.*, the Court of Appeals applied a recent amendment to the RPAPL and determined that

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Estates, Powers and Trusts Law (McKinney) ..... EPTL
General Municipal Law (McKinney) ..... GML
General Obligations Law (McKinney ..... GOL
D. Siegel, New York Practice (1978) ..... SIEGEL
Weinstein, Korn & Miller, New York Civil Practice (1982) ..... WK&M
The Biannual Survey of New York Practice ..... *The Biannual Survey*
The Quarterly Survey of New York Practice ..... *The Quarterly Survey*
The Survey of New York Practice ..... *The Survey*

Extremely valuable in understanding the CPLR are the five reports of the Advisory Committee on Practice and Procedure. They are contained in the following legislative documents and will be cited as follows:

1957 N.Y. Leg. Doc. No. 6(b) ..... FIRST REP.
1958 N.Y. Leg. Doc. No. 13 ..... SECOND REP.
1959 N.Y. Leg. Doc. No. 17 ..... THIRD REP.
1960 N.Y. Leg. Doc. No. 120 ..... FOURTH REP.
1961 Final Report of the Advisory Committee on Practice and Procedure ..... FINAL REP.

Also valuable are the two joint reports of the Senate Finance and Assembly Ways and Means Committee:

1961 N.Y. Leg. Doc. No. 15 ..... FIFTH REP.
1962 N.Y. Leg. Doc. No. 8 ..... SIXTH REP.

the legislature intended to alter the well known *Yellowstone* injunction. The Court interpreted the new enactment, which directs the civil court to grant the tenant a ten day cure period after a breach has been found, to provide effectively the same remedy as a *Yellowstone* injunction, which preserves the tenancy by tolling the cure period during the pendency of the action. Therefore, the Court, in an effort to relieve crowded supreme court dockets, held that under the amendment the civil court, not the supreme court, is the proper forum for settling a landlord-tenant dispute.

Addressing a question of intermediate appeals in criminal proceedings, the Court of Appeals in *Abrams v. Anonymous* determined that a direct appeal from a decision to disqualify an attorney representing individuals under criminal investigation may be taken because such a proceeding is civil in nature. Examining the nature of the proceeding and the relief sought, the *Abrams* Court held that a disqualification proceeding is not made criminal because the underlying subject matter is a criminal investigation. In so ruling, the Court concluded that the general rule prohibiting interlocutory appeals in criminal proceedings was not in issue.

The members of Volume 59 hope that the discussion and analysis of the cases contained in *The Survey* will be of interest and value to the New York bench and bar.

CIVIL PRACTICE LAW AND RULES

CPLR 327(b): Forum non conveniens relief may no longer be granted by a court if, pursuant to certain contracts, the parties have agreed on New York as their choice of forum in accordance with section 5-1402 of the GOL

CPLR 327 provides that a court may stay or dismiss an action on the basis of forum non conveniens when it is determined that, in the interest of substantial justice, the action should be heard in another forum.[1] The rule further states that application of forum

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[1] *See* CPLR 327(a) (McKinney Supp. 1984-1985). Rule 327(a) provides:

> When the court finds that in the interest of substantial justice the action should be heard in another forum, the court, on the motion of any party, may stay or dismiss the action in whole or in part on any conditions that may be just. The domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the action.

Id. The doctrine of forum non conveniens originated at common law and was invoked with regularity prior to its codification. *See The Survey*, 46 ST. JOHN'S L. REV. 561, 589-91 (1972); *see also* Barrett, *The Doctrine of* Forum Non Conveniens, 35 CALIF. L. REV. 380, 386-87