

The Survey of New York Practice Table of Contents

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THE SURVEY OF NEW YORK PRACTICE

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INTRODUCTION*

In the second issue of Volume 58, *The Survey* investigates five Court of Appeals cases of significance in trial and appellate practice in both the criminal and civil spheres. In the area of criminal investigation, the Court in *Brockway v. Monroe* extended transactional immunity to a witness, despite a failure to comply strictly with the statutory procedures of CPL § 50.20. In *In re Grand Jury Investigation of Onondaga County*, the Court restricted the investigative power of the District Attorney, holding that the physician-patient privilege proscribed the use of a grand jury subpoena for the names and addresses of all victims of stab wounds treated at a particular hospital. The importance of a homicide investigation, the Court determined, does not override the policies behind the statutory privilege.

In the civil area, the Court, in *Mills v. County of Monroe*, held General Municipal Law § 50-e applicable to a civil rights action under the New York Executive Law and 42 U.S.C. § 1981. The *Mills* holding requires the filing of a notice of claim as a condition

*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
Estates, Powers and Trusts Law (McKinney)	EPTL
General Municipal Law (McKinney)	GML
General Obligations Law (McKinney)	GOL
D. Siegel, <i>New York Practice</i> (1978)	SIEGEL
Weinstein, Korn & Miller, <i>New York Civil Practice</i> (1979)	WK&M
<i>The Biannual Survey of New York Practice</i>	<i>The Biannual Survey</i>
<i>The Quarterly Survey of New York Practice</i>	<i>The Quarterly Survey</i>
<i>The Survey of New York Practice</i>	<i>The Survey</i>

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.

precedent to the maintenance of a civil rights action in state court, notwithstanding that a notice of claim need not be filed to maintain such an action in federal court.

In the area of appellate practice, two important developments are explored in *The Survey*. In *Morgenthau v. Erlbaum*, the Court approved the District Attorney's use of the declaratory judgment action as a means of appealing an unfavorable interlocutory ruling by a lower criminal court. On the civil side, the Court of Appeals, in *Hecht v. City of New York*, held that the Appellate Division has no authority under CPLR 5522 to grant relief to a party who fails to undertake an appeal, absent a united and inseverable interest with the successful appellant. It is hoped that the discussion of these cases in *The Survey* will prove to be of interest to the New York bench and bar.

CIVIL PRACTICE LAW AND RULES

Article 30—Remedies and Pleadings

CPLR 3001: Action for declaratory relief is a procedurally proper means of obtaining collateral review of an interlocutory criminal court order

Section 3001 of the CPLR provides that a court "may render a declaratory judgment" to resolve "the rights and other legal relations of the parties to a justiciable controversy."¹ Although the statute is broad in scope,² some courts have exercised the granted

¹ CPLR 3001 (1974). Section 3001 of the CPLR provides:

The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. If the court declines to render such a judgment it shall state its grounds.

Id. Section 3017(b), which sets requirements for a party seeking a declaratory judgment, provides:

In an action for a declaratory judgment, the demand for relief in the complaint shall specify the rights and other legal relations on which a declaration is requested and state whether further or consequential relief is or could be claimed and the nature and extent of any such relief which is claimed.

Id. 3017(b).

² See *James v. Alderton Dock Yards, Ltd.*, 256 N.Y. 298, 305, 176 N.E. 401, 404 (1931); 3 WK&M ¶ 3001.06, at 30-28 to 29 (1982). There is no inherent limitation on the type of declaratory relief available under the Declaratory Judgment Act, CPLR 3001. *Maguire v. Monaghan*, 206 Misc. 550, 555, 134 N.Y.S.2d 320, 326 (Sup. Ct. N.Y. County 1954), *aff'd mem.*, 285 App. Div. 926, 139 N.Y.S.2d 883 (1st Dep't 1955); see also Posner, *Declaratory Judgments in New York*, 1 ST. JOHN'S L. REV. 129, 130 (1927) (broad scope of declaratory judgment statute intended to allow courts unfettered discretion). Since there must be a