St. John's Law Review

Volume 57, Winter 1983, Number 2 Article 6

The Survey of New York Practice Table of Contents

St. John's Law Review

THE SURVEY OF NEW YORK PRACTICE

TABLE OF CONTENTS

INTRODUCTION*

This issue of *The Survey* examines several recent Court of Appeals decisions of constitutional significance. In *Board of Education v. Nyquist,* New York's highest court applied the rational basis standard of judicial review to uphold the constitutionality of the state's public school financing system, notwithstanding existing disparities in educational facilities among various school districts. In *In re Bronx County Grand Jury Investigation (Vanderbilt),* the Court extended the privilege against self-incrimination, by holding that a tape recording made by a criminal suspect prior to his attempted suicide, and subsequently delivered to his attorney, was testimonial evidence for purposes of the fifth amendment, and, therefore, fell within the attorney-client privilege. Finally, in *Sharapata v. Town of Islip,* the Court construed section 8 of the Court of Claims Act as not permitting an award of punitive damages against the state or its political subdivisions, since neither punishment nor deterence, the policies that underlie a punitive award, would be advanced by imposing such a burden on the

---

* 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, New York Practice (1978) ..... SIEGEL
Weinstein, Korn & Miller, New York Civil Practice (1979) ..... 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.

taxpayer.

People v. Smith, commented upon in this edition of *The Survey,* reflects the Appellate Division, First Department's view that a criminal verdict is not tainted by juror experimentation, as long as it involves merely an application of common sense and everyday experience. Other appellate division cases discussed include *Burns Jackson Miller Summit & Spitzer v. Lindner,* wherein the second department held that no express or implied private cause of action exists under New York's Taylor Law. Of particular interest to the practitioner should be the same court's determination, in *Curry v. Moser,* that evidence of the nonuse of an available seatbelt is admissible to determine the plaintiff's contributory negligence as an alleged proximate cause of the underlying automobile accident.

A supreme court case analyzed in this issue involves another in the series of decisions interpreting New York's recently enacted equitable distribution law. In *M.V.R. v. T.V.R.,* the Supreme Court, New York County, held that as a matter of law marital fault may not be considered in determining an equitable distribution of marital property upon divorce.

It is hoped that *The Survey's* treatment of these developments in New York law will be of help and interest to members of the New York bar.

CIVIL SERVICE LAW

Civ. Serv. Law § 210: No private right of action under Taylor Law for damages resulting from public employee strike

Sections 200 to 214 of the New York Civil Service Law (the Taylor Law), which govern labor relations in the public sector,[1]

---

[1] N.Y. CIV. SERV. LAW §§ 200-214 (McKinney 1973 & Supp. 1981). Prior to enactment of the Taylor Law in 1967, public employer-employee relations primarily were governed by the Condon-Wadlin Act, N.Y. CIV. SERV. LAW § 108 (McKinney 1973); *see* Jamur Prods. Corp. v. Quill, 51 Misc. 2d 501, 502-03, 273 N.Y.S.2d 348, 349-50 (Sup. Ct. N.Y. County 1966); Kheel, *The Taylor Law: A Critical Examination of Its Virtues and Defects,* 20 SYRACUSE L. REV. 181, 181-82 (1968); *see also* NEW YORK STATE GOVERNOR'S COMMITTEE ON PUBLIC EMPLOYEE RELATIONS, 1966 FINAL REPORT 6-20 (providing a comprehensive view of the objectives of the Taylor Law from its inception) [hereinafter cited as FINAL REPORT]. The Condon-Wadlin Act was strictly a negative approach to the public employer-employee relationship which simply created a no-strike prohibition and "established harsh and fixed penalties . . . for its violation." King, *The Taylor Act—Experiment in Public Employer-Employee Relations,* 20 SYRACUSE L. REV. 1, 2 (1968). At the time of its repeal, the act was "largely ignored, violated and discredited." *Id.* The deficiencies of this legislation became glaringly apparent during the 1966 transit strike in New York City. This inadequacy