

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 this first edition of Volume 55, *The Survey* treats a wide variety of cases decided by the Court of Appeals with a view

* The following abbreviations will be used uniformly throughout *The Survey*:
New York Civil Practice Law and Rules (McKinney) CPLR

toward keeping the New York practitioner informed of developments in state practice. *I.C.C. Metals v. Municipal Warehouse Co.*, one of seven Court of Appeals decisions analyzed, held that proof of delivery to a warehouseman with an unexplained failure to return the stored property upon demand would establish a prima facie case of conversion. Notably, although the action sought recovery for the intentional wrongful conduct of a bailee, the Court applied the same test previously used to determine the existence of a prima facie case of negligence. Another decision critically examined in *The Survey* is *Morone v. Morone*, the first case involving an attempt to enforce an implied contract between unmarried cohabiting parties to reach the Court in the wake of the famed California case, *Marvin v. Marvin*. Declining to follow the *Marvin* lead, the *Morone* Court refused to allow recovery on the basis of an implied-in-law contract for personal services rendered between unmarried cohabitants.

In the area of criminal procedure law, the Court held in *People v. Brothers* that, under CPL § 30.30(4)(g), court congestion is not an exceptional circumstance which would excuse the prosecutor's failure to be ready for trial and thus justify the denial of a

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 Laws (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.

defendant's motion to dismiss. Also discussed in this issue of *The Survey* is the Court of Appeals decision in *Solnick v. Whalen*. The *Solnick* Court, following the lead of several lower courts, held that the statute of limitations applicable to a declaratory judgment action is that period which would have governed had the action been brought for coercive relief. Notably, the Court in *Solnick* declined to apply the 6-year limitations period prescribed in CPLR 213 for actions with respect to which no statute of limitations is otherwise specified. It is hoped that *The Survey's* discussion of these and other developments will help the practitioner to keep abreast of the trends in New York practice.

ARTICLE 2—LIMITATIONS OF TIME

Four-month statute of limitations applicable to declaratory judgment actions challenging individualized administrative rate-making

The 6-year "residue" provision of CPLR 213 applies to those actions for which no statute of limitations is otherwise specified.¹ Since neither article 2 of the CPLR, nor any other statute provides a time limitation for a declaratory judgment action,² such actions

¹ CPLR 213(1) provides that "an action for which no limitation is specifically prescribed by law" must be brought within six years. CPLR 213(1) (1972). This "residual" limitation period often is applied to actions seeking equitable relief. See, e.g., *Savage v. Savage*, 63 App. Div. 2d 808, 405 N.Y.S.2d 329 (3d Dep't), *appeal dismissed*, 46 N.Y.2d 771 (1978); *Mencher v. Richards*, 256 App. Div. 280, 9 N.Y.S.2d 990 (2d Dep't 1939).

Statutes of limitation reflect a strong public policy against assertion of stale claims. Act, Recommendation and Study relating to Agreements Extending the Statute of Limitations, [1947] N.Y. LAW REV. COMM'N REP. 133, 145; see *Guaranty Trust Co. v. United States*, 304 U.S. 126, 136 (1938); *Caffaro v. Trayna*, 35 N.Y.2d 245, 254, 319 N.E.2d 174, 179, 360 N.Y.S.2d 847, 854 (1974) (Breitel, C.J., dissenting) (citing 1 WK&M ¶ 201.01). In addition, the imposition of a limitations period promotes the accurate determination of disputes. See 1 WK&M ¶ 202.01, at 2-7. Notably, the expiration of the statute of limitation bars only the remedy associated with a theory of liability and does not affect the underlying substantive rights. *Dentists' Supply Co. v. Corneliem*, 281 App. Div. 306, 308, 119 N.Y.S.2d 570, 572 (1st Dep't), *aff'd mem.*, 306 N.Y. 624, 116 N.E.2d 238 (1953); *In re Harlem River Drive*, 278 App. Div. 122, 123, 103 N.Y.S.2d 695, 697 (1st Dep't 1951) (per curiam), *aff'd mem.*, 303 N.Y. 828, 104 N.E.2d 373 (1952).

² CPLR 3001 (1974) provides in pertinent part:

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.

The primary purpose of a declaratory judgment action is "the complete and final settlement of the rights and legal relations of the parties with respect to the matters in controversy." *Barry v. Ready Reference Publishing Co.*, 25 App. Div. 2d 827, 827, 269 N.Y.S.2d 665, 666 (1st Dep't 1966) (per curiam); see *James v. Alderton Dock Yards, Ltd.*, 256 N.Y. 298, 305,