St. John's Law Review

Volume 51
Number 1 *Volume 51, Fall 1976, Number 1*

Article 7

The Survey of New York Practice Table of Contents

St. John's Law Review

THE SURVEY OF NEW YORK PRACTICE

TABLE OF CONTENTS

ARTICLE 2—LIMITATIONS OF TIME
CPLR 202: Significant contacts test extended to breach of warranty claims for purpose of borrowing statute 202
CPLR 214(5): Three-year statute of limitations applied to action for abuse of process 208

ARTICLE 3—JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT
CPLR 303: Counterclaim by Seider*-predicated third-party* Dole *defendant does not constitute commencement of an action* 212

CRIMINAL PROCEDURE LAW
Court of Appeals reaffirms vitality of Donovan-Arthur *rule* 216

GENERAL MUNICIPAL LAW
Gen. Mun. Law § 50-e: Legislature liberalizes notice of claim requirements 222

DEVELOPMENTS IN NEW YORK PRACTICE
Patent danger rule in negligent design actions abandoned 227
Use of term "issue" in a will presumed to encompass illegitimates 232

INTRODUCTION*

This issue of *The Survey* directs its attention to two recent decisions of the Court of Appeals, both of which overruled earlier

---

*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
New York Code of Rules and Regulations ..... NYCRR
New York Rules of Civil Practice ..... RCP
New York City Civil Court Act (McKinney) ..... CCA
Uniform District Court Act (McKinney) ..... UDCA
Uniform Justice Court Act (McKinney) ..... UJCA
Uniform City Court Act (McKinney) ..... UCCA
Real Property Actions and Proceedings Law (McKinney) ..... RPAPL
Domestic Relations Law (McKinney) ..... DRL
Estates, Powers and Trusts Law (McKinney) ..... EPTL
WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE (1976) ..... 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.

precedents. In *Micallef v. Miehle Co.,* the Court discarded the patent danger rule in suits for negligent design of machinery, establishing in its place a rule of reasonable care. In so doing, the Court ended the twenty-six year hegemony of *Campo v. Scofield.* With its discussion of *People v. Hobson, The Survey* continues its recent expansion into the area of criminal procedure. The *Hobson* Court reaffirmed earlier cases holding that when an attorney has entered the case, a criminal defendant may not waive his right to counsel unless his attorney is present. This decision largely discredits the apparent rejection of the *Donovan-Arthur* rule in *People v. Robles.*

Several noteworthy lower court decisions are also considered. In *Martin v. Julius Dierck Equipment Co.,* the Appellate Division, Second Department, held that for statute of limitations purposes under New York's borrowing statute, a warranty cause of action accrues in the jurisdiction with the most significant contacts to the issues, rather than necessarily accruing at the place of sale.

In another significant decision, *Green v. Bender,* the Supreme Court, Westchester County, held that a *Seider*-predicated third party defendant may seek *Dole* apportionment without subjecting himself to in personam jurisdiction. Finally, this issue of *The Survey* deals with the long-awaited liberalization of the notice of claim requirements under section 50-e of the General Municipal Law. This broad amendment to the statute is critically analyzed. Through our discussion of these and other subjects, we hope to serve the practitioner by keeping him abreast of significant new developments in New York law.

ARTICLE 2—LIMITATIONS OF TIME

CPLR 202: Significant contacts test extended to breach of warranty claims for purposes of borrowing statute.

Popularly known as the borrowing statute, CPLR 202 provides that when a cause of action accrues outside the state in favor of a nonresident plaintiff, its commencement must be timely under both New York law and the law of the jurisdiction where it "accrued."[1]

1960 N.Y. LEG. DOC. NO. 80 ..... 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.

[1] CPLR 202 provides: