

The Survey of New York Practice Table of Contents

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THE SURVEY OF NEW YORK PRACTICE

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INTRODUCTION*

The traditional function of *The Survey* has been to alert the bar to significant developments in New York practice. In an effort to more fully achieve this goal, *The Survey* is expanding its coverage of procedural law to include criminal procedure. It is hoped that the practitioner may now utilize *The Survey* to review the major cases affecting procedural issues in criminal as well as civil law.

In the area of criminal procedure, two cases are discussed. In *People v. Fitzpatrick*, the Court of Appeals narrowly construed section 60.35 of the CPL in holding that a party may impeach his own witness only if the witness' in court testimony affirmatively damages that party's case. Coverage is also given to *People v. Puig*, wherein the Supreme Court, New York County, limited the criminal jurisdiction conferred by section 20.20(2)(b) of the CPL over out-of-state conduct threatening community welfare within New York.

As in the past, this installment of *The Survey* also includes recent case law developments in civil practice. Consideration is

* 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
<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. 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 Committees:

1961 N.Y. LEG. DOC. NO. 15	FIFTH REP.
1962 N.Y. LEG. DOC. NO. 18	SIXTH REP.

given to *Paver & Wildfoerster v. Catholic High School Association*, wherein the Court of Appeals was confronted with a time-bar challenge to a demand for arbitration. The *Paver* Court held that arbitration will be time barred only when on no view of the facts could the claim withstand such a challenge had it been an action at law.

Another significant case discussed in *The Survey* is *Basso v. Miller*, wherein the Court of Appeals abandoned use of the common law distinctions between trespassers, licensees, and invitees in determining the duty owed by a landowner to an injured party. Instead, the Court adopted a single duty of reasonable care under the circumstances of each case.

Other cases of significant import discussed in this issue of *The Survey* include *Seligson v. Chase Manhattan Bank*, wherein the Appellate Division, First Department, extended the statute of limitations tolling provisions of CPLR 203(c) to cross-claims. In *Menefee v. Floyd & Beasley Transportation Co.*, the Supreme Court, Nassau County, permitted a *Seider* attachment to stand although several of the plaintiffs were not New York residents. Also discussed is *O'Sullivan v. State*, wherein the Court of Claims held that the 6-month notice requirement of section 10 of the Court of Claims Act applies to apportionment claims brought pursuant to *Dole v. Dow Chemical Corp.*, and that an apportionment action against the state accrues on the date of judgment. Unfortunately, because of limitations of space, many other significant cases could not be discussed. It is hoped, however, that the present installment of *The Survey* offers the practitioner a valuable guide to New York procedure.

ARTICLE 2 — LIMITATIONS OF TIME

CPLR 203(a): Continuous treatment doctrine applied to liability insurer's refusal to defend.

CPLR 203(a) provides that the period within which an action must be commenced is to be computed from the time the cause of action accrues.¹ In actions for breach of contract it is generally held that the cause of action accrues, and thus the statute of limitations begins to run, at the time of initial breach.² In order to mitigate the

¹ CPLR 203(a) provides that "[t]he time within which an action must be commenced, except as otherwise expressly prescribed, shall be computed from the time the cause of action accrued to the time the claim is interposed."

² It is the breach itself that gives rise to the cause of action. Thus, the statute of limitations begins to run regardless of whether plaintiff had knowledge of the breach or whether damages have accrued. See, e.g., *French Evangelical Church v. Borst*, 22 App. Div.