

The Quarterly Survey of New York Practice Table of Contents

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THE QUARTERLY SURVEY OF NEW YORK PRACTICE

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Introduction*

The *Survey* recently instituted a new feature entitled *Developments in New York Practice* under which highly significant cases or areas of law are examined in depth. In this issue, we highlight *Dole v.*

* The following abbreviations will be used uniformly throughout the *Survey*:

New York Civil Practice Law and RulesCPLR

New York Civil Practice ActCPA

New York Rules of Civil PracticeRCP

New York City Civil Court ActCCA

Uniform District Court ActUDCA

Uniform City Court ActUCCA

Real Property Actions and Proceedings LawRPAPL

Domestic Relations LawDRL

WEINSTEIN, KORN AND MILLER, NEW YORK CIVIL PRACTICE (1971)WK&M

The Biannual Survey of New York Practice *The Biannual Survey*

The Quarterly Survey of New York Practice..... *The Quarterly 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. 13SECOND REP.

Dow Chemical Co., a Court of Appeals decision which eliminated the active-passive test for indemnification and established a system of apportionment of damages among defendants in New York. In addition and perhaps more importantly, *Dole* represents a giant step toward the adoption of a system of comparative negligence.

Other cases of special significance include *Myers v. Dunlop Tire & Rubber Corp.*, wherein causes of action by a nonresident, time-barred in the jurisdiction with the predominant interest in them, were nevertheless allowed in New York; *Dobbins v. Clifford*, wherein the court extended the *Flanagan* rule; *In re Guardianship of Ellick*, which holds that the placement of children with an adoption agency constitutes the "transaction of business" under CPLR 302(a)(1); *Prince v. Prince*, in which a court permitted substituted service under CPLR 308(5) in a divorce action; *Block v. Fairbairn*, in which a demand in a bill of particulars for identification of witnesses was permitted under special circumstances; and *Aetna Insurance Co. v. Logue*, wherein the court held that mere conclusory allegations in support of a stay of arbitration proceedings under the MVAIC statute were insufficient.

Also reported herein are eight amendments to the CPLR. It is particularly pleasing to report that the CPLR has been amended to include a Rule 327, a codification of the *Silver* case which liberalized the doctrine of *forum non conveniens*. *Silver* was examined under the *Developments in New York Practice* section in the *March Survey* of Volume 46.

The *Survey* sets forth in each installment those cases which are deemed to make the most significant contribution to New York's procedural law. Due to space limitations, many other less important, but, nevertheless, significant cases cannot be included. While few cases are exhaustively discussed, it is hoped that the *Survey* accomplishes its basic purpose, viz., to key the practitioner to significant developments in the procedural law of New York.

ARTICLE 2 — LIMITATIONS OF TIME

CPLR 202: Causes of action by nonresident, time-barred in jurisdiction with predominant interest, nevertheless allowed in New York.

To relieve its overburdened courts, New York limits the ability of nonresidents to litigate here. CPLR 202 bars an action by a nonresident

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| 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. 8 | SIXTH REP. |