

The Quarterly Survey of New York Practice Table of Contents

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NOTICE

The December installment of the *Survey*, which was held over due to page limitations, appears herein in addition to the regular installment.

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THE QUARTERLY SURVEY OF NEW YORK PRACTICE

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*Introduction**

In this issue, the *Survey* highlights the conflict between federal and state law as to the separability of an arbitration provision from the

* 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 ActCGA

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 (1972)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.

1959 N.Y. LEG. DOC. NO. 17THIRD REP.

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

1961 FINAL REPORT OF THE ADVISORY COMMITTEE
ON PRACTICE AND PROCEDUREFINAL REP.

Also valuable are the two joint reports of the Senate Finance and Assembly Ways and

underlying contract and urges that New York conform to the federal approach by adopting the separability rule. The uncertainty of New York law on this matter is illustrated by *Housekeeper v. Lourie*, a recent First Department decision. Adoption of the federal rule would be in keeping with New York's traditional position of encouraging arbitration.

Other cases of special significance include *LeVine v. Isoserve, Inc.*, wherein the *Flanagan* rule was applied to radiation injuries; *In re Dolgin Eldert Corp.*, where the Court of Appeals held that an oral settlement reached at an informal conference in chambers does not satisfy the open court exception of CPLR 2104; *Murray v. City of New York*, in which the Court permitted an infant to file a late notice of claim where his infancy may have been an important factor in the failure to timely file; *Gordon v. Nationwide Mutual Insurance Co.*, in which the Court held that an insurer is not liable in an excess judgment suit where the refusal to defend or settle is based on a good faith belief that the policy had been cancelled; and *Ford v. Unity Hospital*, which holds that an unauthorized act in New York by an agent of a foreign insurer is a sufficient basis for personal jurisdiction.

Additionally, the *Survey* continues to cover two subjects of special interest: indigents' rights and replevin. Under article 11, the division of authority on the public's responsibility for indigents' publication costs in matrimonial actions is summarized. Under article 71, several cases which clarify the requirements of due process as to replevin are reported.

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 limitations of space, however, 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 203(a): Flanagan rule applied to radiation injuries.

In *LeVine v. Isoserve, Inc.*,¹ the Supreme Court, Albany County, applied the malpractice discovery rule enunciated in *Flanagan v.*

Means Committees:

- 1961 N.Y. LEG. DOC. NO. 15FIFTH REP.
 1962 N.Y. LEG. DOC. NO. 8SIXTH REP.
¹ 70 Misc. 2d 747, 334 N.Y.S.2d 796 (Sup. Ct. Albany County 1972).