

## The Quarterly Survey of New York Practice Table of Contents

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*Introduction\**

Highlighting the March installment of the *Survey* is an extended report of cases applying *Dole v. Dow Chemical Co.*, the landmark Court of Appeals decision which provided for equitable apportionment of damages among joint tortfeasors based on their comparative negli-

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

New York Civil Practice Law and Rules .....CPLR  
 New York Civil Practice Act .....CPA  
 New York Rules of Civil Practice .....RCP  
 New York City Civil Court Act .....CCA  
 Uniform District Court Act .....UDCA  
 Uniform City Court Act .....UCCA  
 Real Property Actions and Proceedings Law .....RPAPL  
 Domestic Relations Law .....DRL  
 General Municipal Law .....GML

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. 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. 8 .....SIXTH REP.

gence. *Dole* was examined under the *Developments in New York Practice* section in the *October Survey* of this volume.

Other cases of special significance include *Meyers v. Dunlop Tire & Rubber Corp.*, which holds that a cause of action in negligence accrues at the place of injury for borrowing statute purposes; *Goodemote v. McClain*, wherein the court held that the statute of limitations was not tolled for the period of the defendant's absence from the state when personal jurisdiction was obtainable over her through expedient service; *Sunrise Toyota, Ltd. v. Toyota Motor Co.*, wherein a parent corporation was found to be doing business in New York on the theory of agency; *Arden v. Loew's Hotels, Inc.*, which holds that a court is powerless to enter a default judgment where a CPLR 305(b) notice served with a summons fails to state the object of the action; *Schaeffer v. Schaeffer*, in which the court departed from the restrictive approach to pretrial disclosure in matrimonial actions; *Vavolizza v. Krieger*, which holds that a determination made in a criminal prosecution may not be relitigated in a subsequent civil action; and *Gramford Realty Corp. v. Valentin*, wherein the court held that a landlord, by its excessive delay, had forfeited the right to summary resolution of its claims.

Also reported, under article 52, are several decisions illustrating the continued willingness of the courts to protect the abused judgment debtor.

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: Cause of action in negligence accrues at place of injury for borrowing statute purposes.*

CPLR 202 provides that a cause of action which accrues outside New York is subject to the shorter of the foreign and the New York statute of limitations, except where the cause of action accrued in favor of a New York resident. Problems arise in fixing the place of accrual for borrowing statute purposes when goods manufactured in New York cause out-of-state injuries. In *Myers v. Dunlop Tire &*