

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**

I sat upon the shore
 Fishing, with the arid plain behind me
 Shall I at least set my lands in order?
 London Bridge is falling down falling down falling down

T. S. Eliot, *The Waste Land*
V., What the Thunder Said

Highlighting this concluding *Survey* of Volume 47 are an extended examination of the constitutionality of New York's attachment statute in light of recent developments in the due process area and an extended report of cases applying the landmark Court of Appeals decision, *Dole v. Dow Chemical Co.* Article 62 was previously analyzed in the March *Survey* of Volume 46. *Dole* was examined under the *Devel-*

* 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
<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>
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.

opments in *New York Practice* section in the October *Survey* of this volume; a sequel appeared in the last *Survey*.

Other cases of special significance include *Caton v. Caton*, where the court held that the failure to publish a summons within twenty days after the granting of the order of publication is a jurisdictional defect; *Kenford Co. v. County of Erie*, wherein the Fourth Department allowed disclosure against a nonparty witness where it would aid preparation for trial; *Zellman v. Metropolitan Transportation Authority*, which holds that the names of eyewitnesses, even if obtained by investigation, are discoverable if they are material and necessary; *Rubino v. G. D. Searle & Co.*, wherein the court allowed the videotaping of a pre-trial examination; and *Phillips v. Joseph Kantor & Co.*, in which the Court of Appeals allowed consideration of evidence excludable under the dead man's statute to defeat a motion for summary judgment.

Additionally, under article 31, the trend toward allowing discovery and inspection of the defendant's automobile liability insurance policy is considered. Under article 11, the Court of Appeals' answer to the question as to whether the state or local government is responsible for indigents' publication costs in matrimonial actions is presented.

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 214(6): First Department rejects extension of discovery rule to attorney malpractice.

Generally, the three-year statute of limitations prescribed by CPLR 214(6) for malpractice actions begins to run at the time of injury.¹ Two exceptions to this rule have been created. *Borgia v. City of New York*² established the "continuous treatment" doctrine, whereby the accrual of a malpractice cause of action is delayed until the services of the physician for the same or related injuries terminate. *Flanagan v. Mount*

¹ *Schwartz v. Heyden Newport Chem. Corp.*, 12 N.Y.2d 212, 188 N.E.2d 142, 237 N.Y.S.2d 714, cert. denied, 374 U.S. 808 (1963); *Conklin v. Draper*, 229 App. Div. 227, 241 N.Y.S. 529 (1st Dep't), aff'd mem., 254 N.Y. 620, 173 N.E. 892 (1930).

² 12 N.Y.2d 151, 187 N.E.2d 777, 237 N.Y.S.2d 319 (1962); accord, *O'Laughlin v. Salamanca Hosp. Dist. Authority*, 36 App. Div. 2d 51, 319 N.Y.S.2d 128 (4th Dep't 1971).