

## 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\*

With this edition, *St. John's Law Review* revises the format of the *Survey* and introduces a new feature — *Developments in New York Practice* — in order to better serve the needs of the practitioner. The CPLR became effective on September 1, 1963; in that year the *Survey* was inaugurated, primarily to report and discuss the more significant cases applying and construing the then new New York law of procedure. Since that time, much clarification has come in the torrent of important litigation concerning the various CPLR provisions. The pace at which important decisions were handed down has much diminished, since most issues have already been resolved. Consequently, the *Survey* will report fewer decisions in most installments, but will provide more extensive treatment of selected subjects. It will focus upon areas of law and legal doctrines, as well as CPLR provisions, providing comprehensive treatment of individual topics under *Developments in New York Practice*. Nevertheless, the basic purpose of the *Survey* remains the same, viz., to key the practitioner to significant developments in the procedural law of New York.

This installment of the *Survey* concentrates its attention upon the doctrine of *forum non conveniens*. Its more liberal application in recent years by the New York courts suggested the need for extensive examination of this trend. Most recently, the Court of Appeals has held that the residence of a party does not preclude application of the doctrine.

\* 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
WEINSTEIN, KORN AND MILLER, NEW YORK CIVIL PRACTICE (1969) .....	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.

Additionally, there are two extended treatments incorporated in the traditional *Survey* format. Under article 32, the "multiple plaintiff anomaly" in mass tort cases is highlighted in a thought-provoking discussion and a possible solution to the problem is suggested. Under article 62, the constitutionality of New York's attachment statute is examined in light of recent decisions in the area of due process.

Also reported herein are cases allowing relation back of a wrongful death action which had not accrued when the original personal injury action was commenced (CPLR 203(e)); applying the *Mendel* rule to an impleader action (CPLR 213); and illustrating the willingness of the court to protect the abused judgment debtor (CPLR 5240).

#### ARTICLE 2 — LIMITATIONS OF TIME

*CPLR 203(e): First Department allows relation back of wrongful death action which had not accrued when personal injury action was commenced.*

Pursuant to CPLR 203(e), a cause of action in an amended pleading will be deemed to relate back to the commencement of the action if the original pleading gave notice of the transaction, occurrences, or series of transactions or occurrences to be proved under the amended pleading. Several lower court decisions<sup>1</sup> have construed this provision to permit the relation back of wrongful death claim to an original personal injury pleading where the former was otherwise time-barred by a statute of limitations. Under similar facts the First Department, in *Palmer v. New York City Transit Authority*,<sup>2</sup> recently assented to this interpretation.

In *Palmer* an action was begun in January 1963 to recover for injuries suffered in a subway accident in March 1962. The plaintiff died in May 1967. His administratrix, the substituted plaintiff, moved in January 1969 for leave to add a cause of action for wrongful death, attributing the death in 1967 to the accident in 1962. The court allowed the interposition of the wrongful death claim, finding that the records<sup>3</sup>

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<sup>1</sup> *Berlin v. Goldberg*, 48 Misc. 2d 1073, 266 N.Y.S.2d 475 (N.Y.C. Civ. Ct. N.Y. County 1966), discussed in *The Quarterly Survey*, 41 ST. JOHN'S L. REV., 282, 283 (1966); *Ringle v. Bass*, 46 Misc. 2d 896, 260 N.Y.S.2d 1006 (Sup. Ct. Ulster County 1965), discussed in *The Biannual Survey*, 40 ST. JOHN'S L. REV. 306, 307 (1966); *contra*, *Roberson v. First Nat'l City Bank*, 63 Misc. 2d 105, 311 N.Y.S.2d 601 (Sup. Ct. N.Y. County 1970), discussed in *The Quarterly Survey*, 45 ST. JOHN'S L. REV. 500, 502 (1971).

<sup>2</sup> 37 App. Div. 2d 766, 324 N.Y.S.2d 550 (1st Dep't 1971).

<sup>3</sup> *Palmer v. New York City Transit Authority*, 33 App. Div. 2d 119, 121, 305 N.Y.S.2d 831, 833 (1969). In the same court's decision on an earlier motion the records referred to were those of the decedent as a mental patient. They established that the initial injury had progressed to mental and emotional trauma and, inevitably, to various addictions which were the cause of death.