

# Article VI, §§ 1, 28: Appellate Division Is Empowered To Determine Places of Court Terms

St. John's Law Review

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### Recommended Citation

St. John's Law Review (1972) "Article VI, §§ 1, 28: Appellate Division Is Empowered To Determine Places of Court Terms," *St. John's Law Review*: Vol. 46 : No. 4 , Article 7.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol46/iss4/7>

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The reader's attention is specifically directed to the examination of the constitutionality of the statute, both on its face and as applied, and of the "specialized property" concept introduced in *Sniadach*.

Also reported, under CPLR 301, is *Delagi v. Volkswagenwerk AG*, a recent Court of Appeals decision which provides comprehensive analysis of the "doing business" test as applied to foreign corporations. Additionally, whether the state or a political subdivision is responsible for payment of publication costs in matrimonial actions initiated by indigents, is considered under article 11. Other cases of special practical significance are discussed under CPLR 1201, CPLR 2303, and CPLR 5003.

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.

N.Y. CONSTITUTION

*N.Y. Const. art. VI, §§ 1, 28: Appellate division is empowered to determine places of court terms.*

Article VI of the New York State Constitution provides for the establishment and supervision of a uniform court system throughout the state. The power to supervise this system is delegated to the Administrative Board of the Judicial Conference.<sup>1</sup> Subject to the direc-

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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.

<sup>1</sup> The Board consists of the chief judge of the Court of Appeals and the presiding justices of the appellate division in each judicial department.

tion of this Board, the appellate divisions are granted the responsibility of supervising "the administration and operation of the courts in their respective departments."<sup>2</sup>

In *City of Newburgh v. Rabin*,<sup>3</sup> this broad administrative power of the appellate divisions over their respective jurisdictions was reaffirmed by the Appellate Division, Second Department. At issue was the validity of that court's order directing the transfer of certain terms of the supreme court in Orange County from the courthouse in the City of Newburgh to the Town of Goshen. In dismissing the appellant's article 78 proceeding against the presiding justice,<sup>4</sup> *inter alia*, the court cited the Judiciary Law,<sup>5</sup> which restates the general mandate of the state constitution and specifically empowers the appellate divisions to determine the time and place of all supreme court terms held within their respective departments.

As the court concluded, it clearly possessed "ample power for the making of the challenged order."<sup>6</sup>

#### ARTICLE 2 — LIMITATIONS OF TIME

*CPLR 203(b): Statute of limitations tolled by service upon the Secretary of State.*

Where service of process is made upon the Secretary of State pursuant to section 253 of the Vehicle and Traffic Law,<sup>7</sup> the statute of limitations ceases to run in favor of the defendant if "notice of such service and a copy of the summons and complaint are forthwith sent . . . by certified mail or registered mail with return receipt requested."<sup>8</sup>

*Sadek v. Stewart*<sup>9</sup> held that although the appropriate papers were never received by defendant but were returned to the plaintiff stamped "unknown," service of process upon the Secretary of State was sufficient to toll the statute of limitations. Despite the fact that defendants were non-residents, the statute of limitations ran in their favor since they

<sup>2</sup> N.Y. CONST. art. VI, § 28 (McKinney 1969).

<sup>3</sup> 37 App. Div. 2d 832, 327 N.Y.S.2d 205 (2d Dep't 1971) (mem.).

<sup>4</sup> The court noted that the instant action was brought against the wrong parties since Judiciary Law § 235(2) specifies that such an action should name only the director of administration of the judicial department in his representative capacity as the defendant. *Id.* at 833, 327 N.Y.S.2d at 206.

<sup>5</sup> N.Y. JUDICIARY LAW §§ 86, 214, 216 (McKinney 1962).

<sup>6</sup> 37 App. Div. 2d at 833, 327 N.Y.S.2d at 206, *citing* N.Y. CONST. art. VI, §§ 1, 28; N.Y. JUDICIARY LAW §§ 86, 214, 216 (McKinney 1962).

<sup>7</sup> N.Y. VEH. & TRAF. LAW § 253 (McKinney 1970).

<sup>8</sup> *Id.*

<sup>9</sup> 38 App. Div. 2d 655, 327 N.Y.S.2d 271 (3d Dep't 1971).