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

St. John's Law Review

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

Recommended Citation
Available at: https://scholarship.law.stjohns.edu/lawreview/vol46/iss4/7

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.
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.¹ Subject to the direc-

¹ 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."

In *City of Newburgh v. Rabin*, 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, *inter alia*, the court cited the *Judiciary Law*, 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."

**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*, 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."

*Sadek v. Stewart* 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

---

2 N.Y. CONST. art. VI, § 28 (McKinney 1969).
3 37 App. Div. 2d 832, 327 N.Y.S.2d 205 (2d Dep't 1971) (mem.).
4 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.
7 N.Y. VEH. & TRAF. LAW § 253 (McKinney 1970).
8 *Id.*