

**CPLR 203(b): In an Impleader Action by Retailer for
Indemnification from Manufacturer, the Statute of Limitations
Begins To Run in Favor of the Manufacturer on the Day of Sale**

St. John's Law Review

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

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 selbyc@stjohns.edu.

were amenable to process in New York State.¹⁰ It should be noted that this decision is in accord with the prior law on this point.¹¹

CPLR 203(b): In an impleader action by retailer for indemnification from manufacturer, the statute of limitations begins to run in favor of the manufacturer on the day of sale.

In *Ibach v. Donaldson Service, Inc.*,¹² the Appellate Division, Fourth Department, held that the statute of limitations commences to run on the day that a defective product is sold to the retailer and is available as an affirmative defense to an impleaded manufacturer if the statutory period expires before the commencement of the impleader action.¹³ This decision was merely a logical extension of the principles enunciated in *Mendel v. Pittsburgh Plate Glass Co.*,¹⁴ where the New York Court of Appeals held that a breach of warranty action against the manufacturer of a defective product accrues on the date of sale. Lamentably, this holding sometimes results in the statute of limitations tolling before the potential plaintiff is injured or the potential third-party plaintiff is sued.¹⁵

ARTICLE 3 — JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT

CPLR 301: Foreign corporation held not present within the state under either "agency" or "control" predicates.

When is a non-domiciliary parent corporation, for purposes of jurisdiction, "present" within the state by virtue of the acts its subsidiary performed? Clearly, the mere presence of the subsidiary within the state is not in itself a sufficient basis upon which to exercise jurisdiction over the parent corporation.¹⁶ Such jurisdiction has been up-

¹⁰ CPLR 207.

¹¹ See *Dominion of Canada Gen. Ins. Co. v. Pierson*, 27 App. Div. 2d 484, 280 N.Y.S.2d 296 (3d Dep't 1967); *Glines v. Muszynski*, 15 App. Div. 2d 435, 225 N.Y.S.2d 61 (4th Dep't 1962) (per curiam).

¹² 38 App. Div. 2d 39, 326 N.Y.S.2d 720 (4th Dep't 1971).

¹³ *Id.* at 45, 326 N.Y.S.2d at 726. *Accord*, *Carulloff v. Emerson Radio & Phonograph Corp.*, 445 F.2d 873 (2d Cir. 1971); *Perez v. Chutick & Sudakoff*, 50 F.R.D. 1 (S.D.N.Y. 1970); *C.K.S., Inc. v. Helen Borgenicht Sportswear, Inc.*, 22 App. Div. 2d 650, 253 N.Y.S.2d 56 (1st Dep't 1964) (per curiam); *City & County Sav. Bank v. M. Kramer & Sons, Inc.*, 43 Misc. 2d 731, 252 N.Y.S.2d 224 (Sup. Ct. Albany County 1964). See *The Quarterly Survey*, 46 ST. JOHN'S L. REV. —, — (1972).

¹⁴ 25 N.Y.2d 340, 253 N.E.2d 207, 305 N.Y.S.2d 490 (1969). For an excellent critique of the reasoning in the *Mendel* decision, see *Symposium on Mendel v. Pittsburgh Plate Glass Company*, 45 ST. JOHN'S L. REV. 62 *et seq.* (1970).

¹⁵ For further discussion of the impleader problem, see Siegel, *Procedure Catches Up and Makes Trouble*, 45 ST. JOHN'S L. REV. 63, 69 (1970).

¹⁶ See, e.g., *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333 (1925); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 52, comment *b* at 180-81 (1969).