

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**

The reader who is seeking refuge from the monetary pressures of the times is afforded little sanctuary in this issue of the *Survey*. For, reported under articles 30, 31, 32, 50, 52 and 81 are decisions dealing with amending the ad damnum clause of a complaint, imposing penalties upon a party and an attorney, utilizing a separation agreement as the basis for a 3213 motion for summary judgment, examining conflicting views over the legal rate of interest, reaching a welfare recipient's hidden source of income and allowing costs in a county court action despite statutory mandate, respectively. Obviously, these cases carry financial implications for an attorney as well as his client.

* 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 & MILLER, NEW YORK CIVIL PRACTICE (1969) WK&M
The Biannual Survey of New York Practice *The Biannual Survey*
The Quarterly Survey of New York Practice *The Quarterly Survey*
 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.

Among the more significant cases discussed herein are two Court of Appeals decisions: *Parke-Bernet v. Franklyn* and *Granite Worsted Mills v. Aaronson Cowen, Ltd.* The former apparently marks the end of judicial entanglement with technical rules of agency when jurisdiction is predicated under the long-arm statute. The latter seemingly heralds the beginning of speculative scrutiny of an arbitrator's award.

Finally, special attention must be given to the arguments advanced in *Lawson v. Mantell*, which is reported under article 71. There, the replevin provision contained in CPLR 7102 withstood constitutional attack in the face of allegations that it violated the due process and equal protection clauses. Nevertheless, immediately prior to publication, a federal court held that the section is violative of due process requirements. Further analysis of this area can be expected in future issues of the *Survey*.

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.

The Table of Contents is designed to direct the reader to those specific areas of procedural law which may be of importance to him. The various sections of the CPLR which are specifically treated in the cases are listed under their respective titles.

CPLR 302(a)(1): Further construction of the words "in person," "through an agent," and "transacts business."

Almost since its inception, the purpose of CPLR 302(a)(1)¹ has been, in the words of the Court of Appeals, "to take advantage of the 'new [jurisdictional] enclave' . . . opened up by *International Shoe* where the nonresident defendant has engaged in some purposeful activities in the state."² Nevertheless, in enacting this section, the legislature chose not to fix precise standards as to the minimal contacts required to sustain jurisdiction.³ Two recent cases, in an attempt to clarify the factual prerequisites to the assertion of long-

¹ CPLR 302(a)(1) confers personal jurisdiction over any nondomiciliary who in person or through an agent "transacts any business within the state."

² *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443, 456-57, 209 N.E.2d 68, 75, 261 N.Y.S.2d 8, 18 (1964).

³ *Id.* at 456, 209 N.E.2d at 75, 261 N.Y.S.2d at 18.