

# St. John's Law Review

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## The Quarterly Survey of New York Practice Table of Contents

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## ERRATUM

Due to a rearrangement of pages during page proof, the *Survey* table of contents in the preceding issue inaccurately listed the pages on which each of the subtopics began. The error may be corrected by subtracting nine (9) from each of the numbers listed in the table.

# THE QUARTERLY SURVEY OF NEW YORK PRACTICE

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Introduction\*

Several interesting contrasts are presented in this issue of the *Survey*. In *Aquascutum of London, Inc. v. S.S. American Champion* the Second Circuit liberally interpreted CPLR 302(a)(1) as encompassing a London-based freight corporation whose activities were deemed to approximate more closely those of an ocean carrier than a shipper; in *Ferrante Equipment Co. v. Lasker-Goldman Corp.* the Court of Appeals adopted the conservative attitude toward jurisdiction, often expressed by the lower courts, in dismissing a fourth-party action against a New Jersey indemnitor whose conduct affected work to be performed in New York. In *Anonymous v. Anonymous* the court employed the doctrine of *forum non conveniens* in a traditional fashion to dismiss a pending action; in *Pharo v. Piedmont Aviation, Inc.* a similar result issued, but only because of the First Department's un-

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\* 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.

orthodox approach. Finally, in *Ludwig Mowinckels Rederi v. Dow Chemical Co.* the Court of Appeals was called upon to determine whether it was the court or the arbitrator who should decide a time-limitations objection; in *In re Textiles, Inc.* the supreme court simply referred the limitations defense to the arbitrator, notwithstanding a timely application for a stay of arbitration.

Among the more progressive decisions reported herein are *Belo-fatto v. Marsen Realty Corp.* and *Hochberg v. Hochberg*. In the former, the court refused to vacate service upon a corporation where there was reason to presume that the process server had been intentionally deceived. In the latter, it was recognized that public policy grounds for denying parties to a matrimonial action the advantages of pre-trial discovery were no longer viable. The reader's attention is also directed to the order of the First Department which establishes Individual Calendar Parts in the Supreme Court of New York County. Foreseeably, the new mode of calendar disposition will lead to an increase in judicial efficiency and simultaneously to a decrease in the time and effort expended by the practitioner.

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.

#### NEW YORK STATE CONSTITUTION

*Art. 6, § 28: First Department establishes new procedure for calendar disposition.*

Beginning on January 1, 1971, the Appellate Division, First Department, will implement a pilot project in calendar management,<sup>1</sup> under which five civil parts and three criminal parts of the Supreme Court, New York County, will be designated Individual Calendar Parts. There, eight judges, reflecting a cross-section of judicial experi-

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<sup>1</sup> The full text of the First Department's order is printed in 311 N.Y.S.2d XLIX-XL (Advance sheet no. 1, July 14, 1970).