

Art. 6, § 28: First Department Establishes New Procedure for Calendar Disposition

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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,¹ 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-

¹ 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).

ence, will conduct the entire course of litigation from initiation to judgment, including all interlocutory motions, in specially assigned cases. With the exception of those matters which are not suited for disposition in this manner, *e.g.*, proceedings under the Mental Hygiene Law requiring judicial attendance at hospitals, the cases allocated to the Individual Calendar Parts will be selected so as to represent a cross-section of all matters going before the court.

Because of the experimental nature of the project, the procedures to be followed by the attorney will not be exactly the same as in the past. For example, the First Department has instituted a method for filing of process together with a short statement regarding the nature of the cause of action. In this manner, the judges will be better equipped to control the action from its inception. Additionally, although specific rules remain to be formulated, the First Department has afforded the judges assigned to the Individual Calendar Parts wide discretion in devising new methods of calendar disposition. Thus, it is anticipated that regulations designed solely for the operation of a multi-judge court will be dispensed with, provided that a substantial right of a party is not prejudiced thereby.

The pilot project is to remain in force for at least one year, at which time an evaluation of its results, particularly in terms of speed and number of dispositions, will be made. If the project proves superior to that currently in effect, its general application in the First Department will be indicated; if not, it will be abandoned. Ultimately, the project is intended as a means of securing maximum use of judicial manpower. Simultaneously, the introduction of expeditious procedures will reduce the time and effort of the practitioner. Accordingly, the Bar is encouraged to familiarize itself with the provisions of the First Department's order so that the forthcoming year will provide a fair estimation of whether the plan should be generally adopted.

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

CPLR 302(a)(1): Cases illustrate elusiveness of "transacts business" criteria.

In *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*² the Court of Appeals stated: "In enacting section 302, the Legislature chose not to fix precise guidelines . . ."³ Two recent cases concerning

² 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8, *cert. denied*, 382 U.S. 905 (1965).

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