

The Quarterly Survey of New York Practice Table of Contents

St. John's Law Review

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Recommended Citation

St. John's Law Review (1967) "The Quarterly Survey of New York Practice Table of Contents," *St. John's Law Review*: Vol. 42 : No. 2 , Article 6.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol42/iss2/6>

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THE QUARTERLY SURVEY OF NEW YORK PRACTICE

TABLE OF CONTENTS

	PAGE
Article 2—Limitations of Time	
CPLR 203(b)(4): Delivery of summons in wrong county of New York City not a bar to sixty-day extension.	286
Article 3—Jurisdiction and Service, Appearance and Choice of Court	
CPLR 302: Held applicable to person who was domiciliary at time of tort.	287
CPLR 308(1): Redelivery of service held improper where no exigent circumstances found.	288
CPLR 308(3): Server's testimony as to custom and habit allowed to cure defect in affidavit of service.	289
CPLR 308(4): Court-ordered service on defendant's insurer set aside.	289
Article 10—Parties Generally	
CPLR 1001: Dismissal for failure to join necessary party.	290
CPLR 1005(a): Limited partners allowed to bring class action and derivative action.	291
Article 22—Stay, Motions, Orders and Mandates	
CPLR 2201: Stay denied because of attorney's conflict of interest.	294
CPLR 2214: Deficiency in notice held to be procedural defect.	294
Article 30—Remedies and Pleading	
CPLR 3013: Request for equitable relief not fatal where facts indicated legal relief was proper.	296
CPLR 3024(c): Untimeliness not a bar to motion to strike pre-judicial matter.	297
Article 31—Disclosure	
CPLR 3101(d): Employee's accident report deemed material prepared for litigation.	298
CPLR 3110: Objection rules out attorney's office for taking deposition.	299

	PAGE
Article 32—Accelerated Judgment	
CPLR 3211(a)(8): Motion challenging jurisdiction granted after service of answer.	301
CPLR 3211(e): Jurisdictional defense raised in amended answer relates back to time of original answer.	302
CPLR 3213: Summary judgment on conditional instrument denied.	302
CPLR 3216: Counterclaim dismissed for general delay.	303
Collateral Estoppel: Defense allowed despite claim that issue was not decided by the jury.	304
Article 52—Enforcement of Money Judgments	
CPLR 5231 and Personal Property Law Section 49-b: Simultaneous deductions under support order and income execution allowed.	305
CPLR 5231: Employer must comply with both tax levy and income execution.	306
CPLR 5231: <i>Morris Plan</i> rule not applied.	306
CPLR 5239: Prior perfected U.C.C. security interest superior to judgment lien.	308
Article 63—Injunction	
CPLR 6301: Injunction may be granted in special proceeding.	309
Article 75—Arbitration	
CPLR 7501: Whether dispute is covered by arbitration agreement determined by the court.	310
CPLR 7503: Third-party action stayed pending arbitration.	311
Domestic Relations Law	
DRL § 236: Impact on support proceedings in Family Court.	312
DRL § 240: Failure to obey child support order not punishable by contempt.	313
New York City Civil Court Act	
CCA § 201: No jurisdiction to award money judgment for fraudulent conveyance.	314
MVAIC	
MVAIC: No exception to filing requirements except those found in statute.	315

THE QUARTERLY SURVEY OF NEW YORK PRACTICE

*Introduction **

This episode of the *Survey* presents to the practitioner a varied fare, cases both significant and unique. Of special significance are the brace of Court of Appeals' decisions found in Article 10, in which limited partners were allowed to bring actions both derivative and representative in nature against the limited partnerships. Unique is the case in Article 32 wherein the court dismissed a counterclaim on grounds of general delay. Noteworthy cases also will be found under the usually fecund Articles 3, 32, and 52. Notable by its absence in this installment, though, is the regularly epic treatment of CPLR 3216. But this is not by oversight. Because of the repeal of CPLR 3216 and its replacement with a new provision, the case law built upon the foundation of the old section is now useful solely as an historical

* 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
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. 20	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.
Additional tools for quick reference are the one-volume pamphlet editions of the CPLR published by Matthew Bender & Co. and Edward Thompson Co.	

tool for predicting the reactions of the New York courts to the new enactment. In the absence of case law under the new section, discussion of reaction or prediction would be tenuous indeed.

The basic purpose of the *Quarterly Survey* is to key the practising attorney to significant developments in New York practice. To this end, in each installment of the survey are set forth those cases which have a weighty impact upon the procedural law of New York. Ideally, all the significant cases concerning New York's procedural law would be covered. But, because of space limitations, many other less important, but, nevertheless, significant cases cannot be included.

Considering the *raison d'être* of the *Survey* to be the imparting of information geared to keeping practitioners abreast of the New York law of procedure, feedback from attorneys would be an important aid in an analysis of our efforts. The *St. John's Law Review* would, therefore, welcome critiques from the readers of the *Survey*. In this way, perhaps, any disjunction between the material in the *Survey* and the needs of the attorneys might be effectively healed.

ARTICLE 2 — LIMITATIONS OF TIME

CPLR 203(b)(4): Delivery of summons in wrong county of New York City not a bar to sixty-day extension.

CPLR 203(b)(4) provides for an automatic sixty-day extension of the statute of limitations by delivery of the summons to the sheriff of the county where the defendant resides, is employed, or is doing business. If the defendant is a corporation, the summons may be delivered to the sheriff "in the county in which [the corporation] . . . may be served. . . ."

Under CPA Section 17, the predecessor of CPLR 203(b)(4), the courts required delivery to the sheriff of the *proper* county as a condition to the extension where the defendant was a *natural person*.¹ However, this requirement was waived under the CPLR in *Kosofsky v. Spivak*,² where the delivery was made in Kings County, although defendant, a real person, lived in Bronx County and worked in New York County. Recently, in *Wieboldt v. Rentways, Inc.*,³ the supreme court held that the

¹ *Kleila v. Miller*, 1 App. Div. 2d 697, 147 N.Y.S.2d 589 (2d Dep't 1955); *Balter v. Janis*, 200 Misc. 635, 107 N.Y.S.2d 837 (Sup. Ct. Kings County 1951).

² (Sup. Ct. N.Y. County), N.Y.L.J., Aug. 12, 1964, p. 11, col. 1.

³ 52 Misc. 2d 931, 277 N.Y.S.2d 216 (Sup. Ct. Nassau County 1967).