

# 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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# THE QUARTERLY SURVEY OF NEW YORK PRACTICE

## *Introduction \**

*April is the cruellest month, breeding  
Lilacs out of the dead land, mixing  
Memory and desire, stirring  
Dull roots with spring rain*

*T. S. Eliot, The Waste Land  
I, The Burial of the Dead*

Unfortunately, the mechanics of judicial administration perennially result in a dearth of cases suitable for the April issue of the *Survey*. However, necessity is the mother of invention,\*\* and so, the editors have included in this installment two short notes analyzing certain legislation recently enacted which should be of interest to the practitioner. The first note deals with recent developments concerning CPLR 302(a)(3); the second examines the new "cooling-off" and conciliation procedures now set forth in the Domestic Relations Law.

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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

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.

\*\*See Frauch, *Nothern Memoirs* (Scott ed. 1694).

Also noteworthy is the case of *Spectacular Promotions, Inc. v. Radio Station WING*, which contains an excellent analysis of the situs of an injury for purposes of 302(a)(3) in an unfair competition action.

The editors of the *Law Review* would welcome suggestions from our readers concerning the treatment of topics which would be of interest to the practicing bar. Since the primary purpose of the *Quarterly Survey* is to impart information which will keep practitioners abreast of New York's procedural law, we feel that its subject matter should correlate with what attorneys want to know. And, from what better place can this be divined than from the attorneys themselves? We look forward, then, to correspondence with respect to procedural problems confronting our readers, and we will try our best to treat them.



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

#### *CPLR 302(a)(3): Sufficient contacts further defined.*

In *McKee Electric Co. v. Rauland-Borg Corp.*,<sup>1</sup> plaintiff was one of several New York distributors for defendant, an Illinois corporation not doing business in the State.<sup>2</sup> When friction developed between plaintiff and certain of its customers, defendant sent to New York its representative, whose domicile and office were in New Jersey. The representative made a few visits to New York in an unsuccessful attempt to ease the friction. On one of his visits he was accompanied by a manager of the Illinois corporation.

Upon defendant's termination of the distributorship agreement, plaintiff brought an action alleging breach of contract and conspiracy, basing jurisdiction on CPLR 302(a)(1) and (2). Defendant's motion to dismiss for lack of personal jurisdiction was granted.

Though the plaintiff's affidavits were ambiguous, the trial court gave "plaintiff the benefit of the doubt" and inferred that the original distributorship contract was made in New York. Sub-

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<sup>1</sup> 20 N.Y.2d 377, 229 N.E.2d 604, 283 N.Y.S.2d 34 (1967).

<sup>2</sup> Defendant had "no place of business here, no officers, agents or employees, no property either real or personal, and no telephone listing" in New York. Orders from the New York distributors were made by mail to Chicago where they were accepted or rejected.