

The Quarterly Survey of New York Practice Table of Contents

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Recommended Citation

St. John's Law Review (1966) "The Quarterly Survey of New York Practice Table of Contents," *St. John's Law Review*: Vol. 41 : No. 2 , Article 7.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol41/iss2/7>

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THE QUARTERLY SURVEY OF NEW YORK PRACTICE

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THE QUARTERLY SURVEY OF NEW YORK PRACTICE

*Prepared by the St. John's Law Review Staff Under the
Direction of David D. Siegel†**

*Introduction***

Since the last installment of the *Survey*, the New York Court of Appeals, in *Commercial Credit Corp. v. Lafayette Lincoln-Mercury, Inc.*, has further clarified the law with respect to a CPLR 3216 motion to dismiss for neglect to prosecute. The reader is directed to a discussion of this case under Article 32. Other noteworthy cases may be found under Article 2, where the appellate division, first department, upheld a new cause of action, and under Article 31.

† B.A., Brooklyn College; LL.B., St. John's University School of Law; LL.M., New York University School of Law; Associate Professor of Law, St. John's University School of Law; Assistant Counsel, Joint Legislative Committee on Court Reorganization; Draftsman, New York City Civil Court Act, Uniform District Court Act and Uniform City Court Act; CPLR Co-ordinator, Commission on Estates for Revision of Surrogate's Court Act; Consultant on Practice and Procedure, New York State Judicial Conference; Member, New York Bar.

* The views expressed herein are those of the staff only and do not necessarily reflect the opinions of the Director.

** 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

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.

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 key 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.

ARTICLE 2—LIMITATIONS OF TIME

CPLR 203(e): Relation back of wrongful death action to the commencement of personal injury claim allowed.

On a unique set of facts, the court in *Berlin v. Goldberg*¹ allowed the amendment of a timely personal injury complaint to include a cause of action for wrongful death where the statute of limitations for the amended claims had run. The original action was commenced in 1963, and a motion to amend the complaint to include a cause of action for wrongful death was made in 1964, a year after the death of the plaintiff's deceased. The motion was originally granted and an amended complaint, including the wrongful death claim, was served on the defendant in 1964. On reargument, however, the motion was denied, and such denial was affirmed by the appellate division.² The plaintiff brought the instant motion under CPLR 203(e), after the statute of limitations for the wrongful death action had run.

Prior to enactment of CPLR 203(e), there was no statutory provision allowing for the circumvention of a statute of limitations by the addition, to a timely complaint, of an amendment containing a claim on which the period had run.³ Such amendments were discretionary with the court, and were governed restrictively by the rule of *Harriss v. Tams*.⁴ That case held that amendments merely expanding the allegations in the original pleadings were not barred by the statute of limitations, and thus "related back" to the first claim. Conversely, however, if the amendment introduced a

¹ 48 Misc. 2d 1073, 266 N.Y.S.2d 475 (N.Y.C. Civ. Ct. 1966).

² 22 App. Div. 2d 770, 253 N.Y.S.2d 647 (1st Dep't 1964).

³ 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 203.29 (1965).

⁴ 258 N.Y. 229, 179 N.E. 476 (1932). See 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶¶ 203.29—.32 (1965).