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CPLR 213(2): Amendment

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of another provision (CPLR 204, subd. [a]) just the opposite intention and meaning."[15]

The present case should be contrasted with the prior case of *Creswell v. Doe*.[16] *Creswell* involved Section 618(a) of the Insurance Law. This section requires qualified persons to obtain leave from the supreme court to sue MVAIC on a hit-and-run automobile case. The appellate division held that the statute of limitations was tolled from the date of the accident until the date when leave to sue was granted. By distinguishing *Proc* from *Creswell*, it appears that the Court of Appeals has relied on the clear legislative pronouncements in the area of standard fire insurance policies. It seems unlikely that similar preclusions of CPLR 204(a) will come about absent comparable legislative histories.

CPLR 206(a): Amendment.

CPLR 206(a) has been amended to include: "Except as provided in article 3 of the uniform commercial code." Section 3-122(3) of the Uniform Commercial Code states that a cause of action against a drawer of a draft or an indorser of any instrument accrues upon a demand following dishonor. Typically, such demand takes the form of a notice of dishonor after the instrument has been presented to and dishonored by the person designated on the instrument to pay. Under the prior 206(a) provision, the cause of action was computed from dishonor, not from demand.

CPLR 213(2): Amendment.

CPLR 213(2) has been amended to read that there will be a six-year statute of limitations in any action upon a contractual obligation or liability "except as provided in article 2 of the uniform commercial code." Section 2-725 of the Uniform Commercial Code provides a four-year statute of limitations for breach of a sales contract.

The amendment effects no change. CPLR 213(2) now expressly defers to the Uniform Commercial Code's four-year period for sales contract cases. Before the amendment it also deferred, but under the more general terms of CPLR 101. After the Uniform Commercial Code is four years old, which will be on September 27, 1968, the courts can expect a substantial number of cases in which they will be asked to determine whether the contract involved is a sales contract within the meaning of the

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[15] Proc v. Home Ins. Co., 17 N.Y.2d 239, 245, 217 N.E.2d 136, 139, 270 N.Y.S.2d 412, 415 (1966).

[16] 22 App. Div. 2d 942, 255 N.Y.S.2d 946 (2d Dep't 1964). The appellate division, however, did not look at the legislative history behind the wrongful death statute in rendering its decision.

UCC. If it is, it will have a four-year period; if it is not, it will have the six-year period provided by the CPLR.

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

CPLR 302(a): Amendment.

The revisers of the CPLR have amended section 302(a) to include a new subsection (3), which provides that the New York courts will have in personam jurisdiction over a non-domiciliary defendant who

> 3. commits a tortious act *without* the state causing injury to person or property within the state . . . if he
> (i) *regularly* does or solicits business, or engages in any other *persistent* course of conduct, or derives *substantial* revenue from goods used or consumed or services rendered, in the state, or
> (ii) expects or should reasonably expect the act to have consequences in the state and derives *substantial* revenue from interstate or international commerce. [Emphasis added.]

Prior to the enactment of CPLR 302, a liberal trend was noticeable among those United States Supreme Court decisions which concerned the constitutionality of "long-arm" statutes.[17] The requirement of physical presence within a state gave way to the notion that a non-domiciliary who committed certain acts within the state would be subject to in personam jurisdiction if the imposition of jurisdiction did not offend "our traditional conception of fair play and substantial justice. . . ."[18] In *International Shoe Co. v. Washington,*[19] this was interpreted to mean that due process required a defendant to have certain "minimum contacts" before a state could exercise in personam jurisdiction.

In 1965, the New York Court of Appeals had the opportunity, for the first time, to interpret its own "long-arm" statute. Before it, as a guide, was the liberal decision of the Supreme Court of Illinois in *Gray v. American Radiator & Standard Sanitary Corp.*[20] In that case, an Ohio manufacturer was said to come within the purview of the Illinois "tortious act" jurisdictional statute when a valve he had manufactured in Ohio caused injury in Illinois. The Illinois Supreme Court held that there could be no distinction between the negligent act of manufacturing and the consequences

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[17] See Hanson v. Denckla, 357 U.S. 235 (1958); McGee v. International Life Ins. Co., 355 U.S. 220 (1957); International Shoe Co. v. Washington, 326 U.S. 310 (1945).

[18] International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945).

[19] *Supra* note 17.

[20] 22 Ill. 2d 432, 176 N.E.2d 761 (1961).