

The Biannual Survey of New York Practice: Part VI--Table of Contents

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THE BIENNIAL SURVEY OF NEW YORK PRACTICE: PART VI

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THE BIENNIAL SURVEY OF NEW YORK PRACTICE: PART VI

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Direction of David D. Siegel †*

Introduction

This is the sixth installment of *The Biennial Survey*,* the first of which appeared in December of 1963. Since the last installment, the New York Court of Appeals, in *Salama v. Cohen*, has clarified the law with respect to a CPLR 3216 motion to dismiss for neglect to prosecute. The reader is directed to a synopsis of the history of 3216 which should provide some insight into this sensitive area. Particularly noteworthy cases have also arisen under Articles 3 and 30 of the CPLR.

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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

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 cases discussed herein are those deemed to be of the most importance in the procedural area. Many other cases would be included, but limitations of space prevent the treatment of those less important but, nevertheless, significant cases. Few cases treated in the *Survey* are exhaustively discussed. It is hoped, however, 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 articles.

ARTICLE 2 — LIMITATIONS OF TIME

CPLR 203(e): Relation back to commencement of personal injury action allowed where executor enlarges original action to include a claim for wrongful death.

In New York, once a personal injury action has been commenced, an executor may enlarge that suit to include a claim for wrongful death upon the decease of the original plaintiff.¹ In *Ringle v. Bass*,² the court allowed such an enlargement even though the wrongful death action was not asserted until after the two-year statute of limitations had expired.³ The court based its decision on a combined interpretation of CPLR 203(e) and Decedent Estate Law Section 120. CPLR 203(e) permits an amendment to a complaint to assert a new claim as long as the original pleadings gave "notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading."⁴ Furthermore, Decedent Estate Law Section 120 permits the enlargement of the complaint by the executor to include a claim for wrongful death. The court, in reading these sections together, concluded that since the new claim is based on occurrences stated in the original pleadings and that since the executor has the power to enlarge the action, then the wrongful death cause of action must relate back to the commencement of the original action.⁵ Thus, this result effectively avoided the bar of the statute of limitations.

CPLR 203(e) was an adaptation of Rule 15(e) of the Federal Rules of Civil Procedure which has been interpreted by the federal

¹ N.Y. DECED. EST. LAW § 120.

² 46 Misc. 2d 896, 260 N.Y.S.2d 1006 (Sup. Ct. Ulster County 1965).

³ N.Y. DECED. EST. LAW § 130.

⁴ CPLR 203(e).

⁵ See 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 203.29 (1965).