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of the then existing Civil Practice Act.¹⁶ However, the *Allen* case is the first in over fifty years where the Court of Appeals has been called upon to interpret Section 290-c of the New York Tax Law, which Tax Law has remained virtually unchanged over this period. To read the Tax Law in a vacuum, however, would be a considerable error, for as was said in the case of the *People v. Sexton*,¹⁷ it must be read in conjunction with the Civil Practice Act where the Tax Law is silent. Section 290-c of the Tax Law says nothing of misjoinder of parties. The Civil Practice Act is where the pressures for more liberalized joinder procedures are reflected, not in the opinions of cases decided fifty years ago. In particular, Section 290-c of the Tax Law must be read in conjunction with Section 96 of the Civil Practice Act.¹⁸ The result is that now a motion to have joined parties file separate claims can only be granted, as Section 96 of the Civil Practice Act says, "Whenever it can be done without prejudice to a substantial right."¹⁹

SIX-YEAR STATUTE OF LIMITATION APPLICABLE TO MUNICIPAL LAW SECTION 205-A ACTION

New York General Municipal Law, Section 205-a, grants to a fireman injured on the job a right of action to recover a minimum of \$1000 from the violator of a government regulation if the violation was the cause of the injury. Is such an action one for a penalty or one for compensation?

That question was decided by the Court of Appeals in *Sicolo v. Prudential Savings Bank of Brooklyn*.²⁰ In December 1951 the plaintiff fireman was injured while fighting a fire in defendant's bank building. The original complaint charging negligence was served in January 1954 and was dismissed for insufficiency in March 1956.²¹ An amended complaint,²² setting forth a cause of action under Section 205-a, was served in May 1956, more than four years after the accident. Defendant contended that an action under Section 205-a was one for a penalty and therefore within the three year limitation of Section 49 of the New York Civil Practice Act. Plaintiff maintained that the action was merely one on a liability created by statute and so within the six year limitation of Section 48.²³ Special Term denied defendant's motion to dismiss the complaint.²⁴ The Appellate Division reversed that ruling and granted defendant's motion.²⁵

16. N.Y. SESS. LAWS 1920, ch. 925, 209. At that time this section of the CIV. PRAC. ACT stated that a motion to sever may be granted if joinder "may embarrass or delay the trial of the action. . . ."

17. 274 N.Y. 304, 8 N.E. 869 (1937).

18. Section 96 of the N.Y. CIV. PRAC. ACT states that a proceeding "may be severed . . . whenever it can be done without prejudice to a substantial right."

19. *Ibid.*

20. 5 N.Y.2d 254, 184 N.Y.S.2d 100 (1959).

21. 2 Misc.2d 289, 151 N.Y.S.2d 295 (Sup. Ct. 1956).

22. The amended complaint charged that the plaintiff's injury was caused by the defendant's violation of the New York City Administrative Code § C19-161.1 which forbids the use of combustible draperies under certain conditions.

23. N.Y. CIV. PRAC. ACT § 48.

24. *Sicolo v. Prudential Savings Bank of Brooklyn*, 155 N.Y.S.2d 299 (Sup. Ct. 1956).

25. *Sicolo v. Prudential Savings Bank of Brooklyn*, 4 A.D.2d 790, 165 N.Y.S.2d 222 (2d Dep't 1957).

The Court of Appeals held that the action was one for compensation, that the six year limitation was therefore applicable and that the decision of the Appellate Division must be reversed and the matter remitted to Special Term for further action. The unanimous court, speaking through Desmond, J., declared that the "true test" for distinguishing between a penalty and compensation is whether the remedy "is impressed for punishment or for redress of injury to an individual."²⁶ It pointed out that statutorily doubled damages have been held not to be a penalty in workmen's compensation cases under both federal and state laws.

Several of the cases cited by the court may be distinguished from the instant case, however. In *Bogartz v. Astor*²⁷ and *Sackolwitz v. Charles Hamburg Co.*,²⁸ the Court of Appeals held that Section 14-a of the Workmen's Compensation Law does not impose a penalty although it doubles the amount otherwise payable, if the injured or deceased worker is an illegally employed minor. The statute specifically refers to this as "double compensation." Moreover, as noted by the court in *Sackolwitz*, the intent of the legislature in adding Section 14-a was to insure that a child would be awarded benefits comparable to what he could have recovered under the common law rather than the relatively meagre percentage of his wages under the statute.²⁹ Similarly, the doubled damages provided for in suits for unpaid overtime wages under the Fair Labor Standards Act of 1938³⁰ was held not to be a penalty in *Walsh v. 515 Madison Ave. Corp.*³¹ and in *Asselta v. 149 Madison Ave. Corp.*³² Here again the conclusion was supported directly by the language of the statute. The act specifies that an employee may recover an amount equal to the unpaid wages as "liquidated damages." There, too, the court observed that the amount of recovery was not "so plainly disproportionate to the loss to be treated as a penalty."³³ In each of these cases, the conclusion that a penalty was not intended to be imposed was supported by the presence of specific statutory language. Similar language cannot be found in Section 205-a. Moreover, in each of these cases, the court found that there was a reasonable relation between the loss suffered and the recovery permitted.

In the *Sicolo* case,³⁴ however, the defendant urged that since Section 205-a provides for a minimum recovery of \$1000, recovery in some cases would actually exceed proven damages. The court rejected defendant's conclusion that such a recovery would be a penalty on the basis of the holding in *Cox v.*

26. *Supra* note 20 at 258, 103.

27. 293 N.Y. 563, 59 N.E.2d 246 (1944).

28. 295 N.Y. 264, 67 N.E.2d 152 (1946).

29. *Id.* at 269, 155.

30. 52 STAT. 1060, 29 U.S.C. § 216b as amended 63 STAT. 910 (1949).

31. 293 N.Y. 826, 50 N.E.2d 183 (1944).

32. 65 F. Supp. 385 (S.D.N.Y. 1946), *aff'd* 156 F.2d 139 (2d Cir. 1946), *aff'd* 331 U.S. 199 (1947).

33. *Walsh v. 515 Madison Ave. Corp.*, 181 Misc. 219, 42 N.Y.S.2d 262 (Sup. Ct. 1943).

34. *Supra* note 20.