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Summary Judgments in New York a Statistical Study

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SUMMARY JUDGMENTS IN NEW YORK A STATISTICAL STUDY*

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The summary judgment, as it is known in New York, originated in England in 1855 and was amplified there in 1873.[1] So successful did it prove, that Sir Frederick Pollock, in 1912, wrote of it: "Remembering that in England, at any rate, the majority of actions are undefended, we cannot doubt that Order XIV (authorizing summary judgments) is among the most beneficent inventions of modern procedure."[2]

The summary judgment procedure was inaugurated in New York on October 1, 1921, as a means for disposing without trial in certain civil cases, of sham and frivolous answers—defenses groundless in fact or in law. As originally worded in Rules of Civil Practice No. 113, it was provided:

> "When an answer is served in an action to recover a debt or liquidated demand arising,
> 1. on a contract, express or implied, sealed or not sealed; or
> 2. on a judgment for a stated sum; the answer may be struck out and judgment entered thereon on motion, and the affidavit of the plaintiff or of any other person having knowledge of the facts, verifying the cause of action and stating the amount claimed, and his belief that there is no defense to the action; unless the defendant by affidavit, or other proof, shall show such facts as may be deemed, by the judge hearing the motion, sufficient to entitle him to defend."

This summary judgment rule, limited as will be observed to contract cases for liquidated or set amounts, was in effect in New York for over ten years without change.

Although it has been truly said that it takes time and often a long time to make a new remedy thoroughly operative,[3] as early as January, 1924, the rule was recognized as avoiding much unrighteous

*This article has been developed from a study made for the Commission on the Administration of Justice in New York State.

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[1]For the history and nature of the summary judgment procedure, see the outstanding article on the subject, Clark & Samenow, *The Summary Judgment* (1929) 38 YALE L. J. 423.

[2]POLLOCK, THE GENIUS OF THE COMMON LAW (1912) 83.

[3]CLARK, FIRST REPORT OF THE CONNECTICUT JUDICIAL COUNCIL (1928) 42.

delay.[4] It has been called "the outstanding achievement of the Civil Practice Revision of 1921."[5]

One might have supposed that the clear merit of the summary judgment would have been quickly recognized and adopted with enthusiasm by other jurisdictions, but this has not been so. At the present time the summary judgment exists[6] in varying degrees and scope in England,[7] Ontario,[8] and many parts of the British Commonwealth,[9] California (but only in the lower courts),[10] Connecticut,[11] Massachusetts,[12] Michigan,[13] New Jersey,[14] Rhode Island,[15] and Wisconsin.[16]

The relative slowness with which the summary judgment has been adopted by other jurisdictions is more easily understood when one considers the history of the remedy in New York. As early as 1885, David Dudley Field, famed as the originator of New York Code Practice, had recommended it for negotiable instruments and similar liquidated demands.[17] In 1911 Justice Adolph J. Rodenbeck, champion of simplified and improved practice, had brought the matter to the attention of the New York Bar.[18]

From 1912 to 1919 the New York State Board of Statutory Consolidation on the Simplification of the Civil Practice in the Courts of New York considered the subject. The aim of the summary judgment was stated to be to relieve commercial cases from sham defenses by giving the "widest latitude practicable" to the courts.[19] During the period of the Board's labors, the New Jersey Practice Act of 1912 was promulgated. That Act however merely adopted a small

[4]McCall, *Summary Judgment Under New York Rules* (1924) 10 A. B. A. J. 22.

[5]J. L. Rothschild, quoted in (1925) 5 ORE. L. REV. 1, at 18.

[6]See *supra* note 1, *infra* note 25.

[7]ORDER III, RULE 6; ORDERS XIV, XIVA and XV. See Clark & Samenow, *supra* note 1, at 424.

[8]Clark & Samenow, *op. cit. supra* note 1, at 436.

[9]*Id.*, at 439.

[10]CAL. CODE CIV. PROC. (Deering, 1931) §§ 831 d, 831 h.

[11]CONN. RULES OF CIVIL PRACTICE, No. 14A 1.

[12]MASS. GEN. LAWS (1921) c. 231, § 59.

[13]MICH. COURT RULES 30, Sec. 7. This section provides that in any action at law either party may move by affidavit for judgment on the ground that no question of fact exists. No statistics concerning the operation of the new section are available.

[14]N. J. PRACTICE ACT, RULES 80–84. (formerly RULES 57–60 and 79).

[15]R. I. GEN. LAWS (1929) c. 1343.

[16]WIS. STAT. (1929) 270.635.

[17]A. B. A. REP. (1885) pp. 323, 363.

[18](1911) N. Y. STATE BAR ASSOC. REP. 354, 442.

[19]REPORT N. Y. STATE BOARD OF STATUTORY CONSOLIDATION (1912) p. 14.

portion of the English rule.[20] The New York Board oscillated between suggesting the English rule[21] and an all-embracing rule providing for a summary judgment in any type of action.[22]

In 1920, out of the Board's labors grew the Convention to Formulate Rules of Civil Practice, of which the late Justice Alfred R. Page of the Appellate Division of the Supreme Court of New York, First Judicial Department, was Chairman. Justice Page had been in favor of adopting the English rule which the Board had proposed in 1915. Finally, however, this, together with the broader summary judgment idea, was abandoned and a modification of the summary judgment rule of New Jersey was adopted as Rule of Civil Practice No. 113, set forth above.[23]

As has been pointed out elsewhere,[24] the adoption of this narrower rule was solely due to the desire that at least an entering wedge for the new procedure should be made.

In the summer of 1931, the writer conceived that a statistical study of the actual operation of the summary judgment—the effect of the rule of law in action—might be useful. The difficulties confronting an individual engaged in making a comprehensive survey soon became apparent, but many of the facts were nevertheless gathered, centralized and analyzed.

Thereafter, the Commission on the Administration of Justice in New York State loaned the services of the writer to Presiding Justice Edward R. Finch of the Appellate Division of the Supreme Court, First Judicial Department,[25] under whose leadership an amendment of Rule 113 was adopted by a majority of the Justices of the Appellate Divisions of the Supreme Court, effective April 16, 1932, which confirmed the benefits of Rule 113 and vastly increased its

[20]See *supra* note 13.

[21]VOL. 1, REPORT OF N. Y. STATE BOARD OF STATUTORY CONSOLIDATION (1915) pp. 23, 127, 212, 393. [22]*Ibid*, VOL. 5 (1919) RULE 231, p. 89.

[23]The modification of the New Jersey Rule consisted in (1) omitting a third category of the New Jersey Rule permitting summary judgments "upon a statute" at the request and suggestion of the Attorney General of New York on the ground that in an action for a statutory penalty under Section 248 of the Civil Practice Act since a defendant would not be forced to verify an answer he should not, by the proposed rule, be forced to swear to an affidavit in defense; (2) In omitting the provision of the New Jersey Rule 60, which read "Leave to defend may be given unconditionally, or upon such terms as to giving security, or time or mode of trial, or otherwise, as may be deemed just." (*cf.* Finch, *Summary Judgments Under the Civil Practice Act in New York* (1924) 49 A. B. A. REP. 588, and 2 PAGE, LECTURES ON LEGAL TOPICS (1920–21) pp. 243, 255).

[24]*Finch, op. cit. supra* note 23, and ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK YEAR BOOK (1931) pp. 450, 452.

[25]Finch, *Summary Judgment Procedure* (1933) 19 A. B. A. J. 504, 507.

scope. So well did this improvement function that the Justices of the Appellate Divisions, fourteen months later, extended the summary judgment procedure to summary judgments dismissing the complaint in the contract and equity types of cases contained in the foregoing amendment of 1932 and in all types of actions where a "documentary defense" was believed to be conclusive against the plaintiff's case. Rule 113 as thus amended, effective June 16th, 1933, gives New York by far the most advanced summary judgment procedure of any jurisdiction under the common law. It provides, as follows:

"When an answer is served in an action,

1. To recover a debt or liquidated demand arising on a contract express or implied in fact or in law, sealed or not sealed; or

2. To recover a debt or liquidated demand arising on a judgment for a stated sum; or

3. On a statute where the sum sought to be recovered is a sum of money other than a penalty; or

4. To recover an unliquidated debt or demand for a sum of money only arising on a contract express or implied in fact or in law, sealed or not sealed, other than for breach of promise to marry; or

5. To recover possession of a specific chattel or chattels with or without a claim for the hire thereof or for damages for the taking or detention thereof; or

6. To enforce or foreclose a lien or mortgage; or

7. For specific performance of a contract in writing for the sale or purchase of property, including such alternative and incidental relief as the case may require; or

8. For an accounting arising on a written contract, sealed or not sealed.

The complaint may be dismissed or answer may be struck out and judgment entered in favor of either party on motion upon the affidavit of a party or of any other person having knowledge of the facts, setting forth such evidentiary facts as shall, if the motion is made on behalf of the plaintiff, establish the cause of action sufficiently to entitle plaintiff to judgment, and if the motion is made on behalf of the defendant such evidentiary facts, including copies of all documents, as shall fully disclose defendant's contentions and show that his denials or defenses are sufficient to defeat plaintiff, together with the belief of the moving party either that there is no defense to the action or that the action has no merit, as the case may be, unless the other party, by affidavit or other proof, shall show such facts as may be deemed by the judge hearing the motion sufficient to entitle him to a trial of the issues. If upon such motion made on behalf of a defendant it shall appear that the plaintiff is entitled to judgment, the judge hearing the motion may award judgment to

the plaintiff even though the plaintiff has not made a cross-motion therefor.

If the plaintiff or defendant in any action set forth in subdivisions 3, 4 or 5 hereunder shall fail to show such facts as may be deemed by the judge hearing the motion to present any triable issue of fact other than the question of the amount of damages for which judgment should be granted, an assessment to determine such amount shall forthwith be ordered for immediate hearing to be tried by a referee, by the court alone or by the court and a jury, whichever shall be appropriate. Upon the rendering of the assessment, judgment in the action shall be rendered forthwith.

When in any actions in cases set forth in subdivisions 6, 7 and 8 hereunder the judge hearing the motion has been convinced that there is no preliminary triable issue of fact, the court shall forthwith render an appropriate judgment or order, and thenceforth the action shall proceed in the ordinary course.

Where an answer is served in any action setting forth a defense which is sufficient as a matter of law, where the defense is founded upon facts established prima facie by documentary evidence or official record, the complaint may be dismissed on motion unless the plaintiff by affidavit or other proof shall show such facts as may be deemed by the judge hearing the motion sufficient to raise an issue with respect to the verity and conclusiveness of such documentary evidence or official record.

This rule shall be applicable to counterclaims, so that either party may move with respect to the same as though the counterclaim were an independent action. The court in its discretion may provide for the withholding of entry of judgment until the disposition of the issue in the main case.

This rule shall be applicable to all pending actions."[26]

Despite the adoption of the amended Rule 113, it seems of some importance that the statistical record of the summary judgment remedy, as it existed substantially up to the time of the amendment, should be known.

Sources and Extent of this Study

The writer desired to make comparisons between the operation of the summary judgment in New York and in other jurisdictions. There are statistics available, however, only in England and Rhode Island. The English statistics[27] show that for the King's Bench Division in England, over four times as many summary judgments as judgments after trial, are entered:

[26]For partial derivation of the new rule's component parts, see Finch, *op. cit. supra* note 25 and N. Y. L. J., Mar. 14, 1932, p. 1393, and May 16, 1932, p. 2724.

[27]Civil Judicial Statistics, (1923–29) 16.

Year	Applications under Order XIV	Judgments under Order XIV	Judgments after trial
1923	14,462	6,773	1,546
1924	12,552	5,635	1,255
1925	11,615	5,181	1,466
1926	10,519	4,718	1,279
1927	10,165	4,280	1,258
1928	9,490	4,071	1,289
1929	10,584	4,409	1,310

Although these statistics would indicate an approximate eighty per cent relief to the trial docket,[28] nevertheless, because the English system includes a large corps of masters, it is not entirely comparable to the summary judgment system in New York.[29]

In Rhode Island, sparse statistics indicate, rather than prove, the value of the summary judgment.[30]

Consequently, this study makes no comparisons with other jurisdictions.

The period covered by this study includes from the effective date of Rule of Civil Practice 113, October 1, 1921, to January 1, 1931, with the exception of the Court of Appeals, where, in order to complete the picture, the study was continued for one year, *i. e.*, to January 1, 1932.

The outstanding fact brought home to the writer in making this study was that, with every fact a matter of record in court archives, nevertheless, the simplest facts are ascertainable only with the utmost difficulty. For example, the salient question to answer in this study was: To what extent has summary judgment procedure been utilized in New York Courts? But, with one outstanding exception, complete data concerning summary judgments in the courts of original jurisdiction in New York State are unavailable except by reading the pleadings and papers filed in each individual case on file in the respective courts—a Herculean task.

There has been a page to page examination of all of the official reports (Court of Appeals, Appellate Division and Miscellaneous) from which the following facts appear:

In the Court of Appeals Reports, 1923 through 1931, there were 30 reported summary judgment decisions exclusive of memoranda, comprising 192 pages of opinions.

[28]Sunderland, *An Appraisal of English Procedure* (1926) 9 JOURN. AMER. JUDIC. SOC. 164, 165, and (1926) 50 A. B. A. REP. 242, 244, 245.

[29]See CLARK, FIRST REPORT OF CONNECTICUT JUDICIAL COUNCIL (1928) p. 41.

[30]FIRST REPORT RHODE ISLAND JUDICIAL COUNCIL (1927) p. 12; FOURTH REPORT (1930) pp. 30, 35; and FIFTH REPORT (1931) pp. 44, 52.

In the Appellate Division Reports, 1922 through 1930, summary judgment decisions, exclusive of memoranda, were:

First Department	93 decisions	332 pages
Second Department	22 decisions	87 pages
Third Department	9 decisions	22 pages
Fourth Department	11 decisions	32 pages
Total	135 decisions	473 pages

Reversals by the Court of Appeals rendered 6 of these decisions, comprising 27 pages, academic.

In the Miscellaneous Reports, October 1, 1921, through 1930, there were 177 summary judgment decisions, exclusive of memoranda, comprising 478 pages. Reversals by the Appellate Divisions or the Court of Appeals rendered 8 of these decisions, comprising 24 pages, academic.

Due to natural limitations, it was impossible to obtain statistical data covering all the courts in the State and the writer accordingly confined himself chiefly to cases appearing in the official reports, and, in view of the proportionately large volume of commercial litigation in the County of New York, to the courts of original jurisdiction in that County as well as to following such cases in the appellate courts.

The analysis with respect to the Appellate Division of the Supreme Court for the First Judicial Department was made by a page to page examination of the confidential conference abstracts of that court, the so-called "Bible", which was kindly placed at the writer's disposal by Presiding Justice Finch.

The Analysis for the Appellate Term of the Supreme Court of the First Judicial Department was made by a page to page examination of the minute books of that court.

For the Supreme Court, New York County, the figures have been obtained from an analysis of the Special Term for Trials, Part III calendar cards and statistical sheets.[31]

[31]Valuable information complementing the data contained in this study will be found in the JUDICIAL STATISTICS OF THE FIRST JUDICIAL DEPARTMENT; statistics concerning the work of the Court of Appeals in the ANNUAL REPORTS OF THE NEW YORK STATE BAR ASSOCIATION; statistics concerning the proportion of opinions to decisions in various courts, prepared by the late Alden Rosbrook ((1925) 10 CORNELL LAW QUARTERLY 103); CASES AND POINTS, which consist of records and briefs in all appeals in New York except from the Municipal Court of the City of New York and which are preserved for the benefit of those interested; *The Summary Judgment*, by Clark & Samenow ((1929) 38 YALE L. J. 423); and finally, the statistical study of 250 sample cases taken from the Supreme Court, New York County, *Summary Judgments in the Supreme Court of New York*, by Felix S. Cohen ((1932) 32 COL. L. REV. 825).

The writer wishes to express his thanks for the kind co-operation and assistance

SUMMARY JUDGMENT PRACTICE

In connection with the following tables and for the benefit of those unacquainted with summary judgment practice in the New York Courts of original and appellate jurisdiction, the following should be noted: Generally speaking, and without any scientific precision with respect to limitations on jurisdiction, the Municipal Court of the City of New York hears litigation for sums of money up to $1,000 in amount,[32] and the City Court of the City of New York, for sums up to $3,000, since 1927,[33] and prior to that time up to $2,000. The Supreme Court of the State of New York has general jurisdiction unlimited in amount. However, for the sake of keeping litigants in the proper inferior court, statutory costs are refused to a successful plaintiff who should have brought his action in a lower court.[34]

With respect to the courts of original jurisdiction, the practice in the Supreme Court, New York County, since October 1, 1921, has been to have the summary judgment motions returnable before the justice presiding at Special Term for Trials, Part III, the equity part devoted to the trial of suits in equity, except during the three summer recess months when the motions have been returnable before the justice presiding at Special Term, Part I, the part devoted to contested motions. Special Term, Part III, is also the calendar part for equity suits, and up to the October Term, 1931, the practice was for the justice presiding in Special Term, Part III, to assign and distribute summary judgment motions among the several justices sitting in the equity trial term parts, including himself. The motions were then heard by the several justices daily, prior to the hearings of the trials in their respective parts. However, since October Term, 1931, the justice sitting at Special Term, Part III, retains and disposes of all summary judgment motions and the other Special Term Justices devote themselves exclusively to the trial of cases.

In the City Court of the City of New York summary judgments have always been returnable to and determined by the justice sitting in Special Term, Part I, devoted to contested motions.

In the Municipal Court of the City of New York, summary judgment motions have always been returnable in the district where the summons is filed. They are determined either by the justice sitting in the calendar part, known as Part I, or, if other judges are sitting in

of Messrs. Campbell and Doane of the Appellate Division, First Department; Messrs. Bensel and Webber of the Appellate Term, First Department; and Messrs. Tierney and Salzman of Special Term for Trials, Part III, Supreme Court, New York County.

[32]MUNICIPAL CT. CODE § 6.

[33]N. Y. CITY CT. ACT § 16.

[34]CIVIL PRAC. ACT § 1474.

the same district at the same time, the motions may be assigned to other parts.

The practice with respect to permitting oral argument or requiring submission of all motion papers without hearing, is a matter which in all of the courts rests in the discretion of the judge before whom the motion comes.

With respect to courts of appellate jurisdiction, appeals from the Supreme Court go to the Appellate Divisions of the Supreme Court, and thence to the Court of Appeals. Appeals from the City Court of the City of New York and the Municipal Court of the City of New York, go to the Appellate Term of the Supreme Court and thence to the Appellate Division and Court of Appeals. The provisions permitting appeals from the Supreme Court and from the City Court are similar.[35] Appeals as of right lie from all orders granting summary judgment. Within the period covered by this study, appeals as of right lay from orders denying summary judgment in all courts of civil jurisdiction of New York City, except the Municipal Court.

Concerning the practice on appeals, it is important to note that from the first reported Appellate Division case, *Dwan v. Massarene, 199 App. Div. 872, 192 N. Y. Supp. 577* decided February 10, 1922, until the opinion in *Interstate Pulp & Paper Co. Inc. v. New York Tribune, 207 App. Div. 453, 202 N. Y. Supp. 232* decided December 21, 1923, a period of over two years from the effective date of summary judgment procedure, appeals were not permitted from the Supreme Court to the Appellate Division or from the City Court to the Appellate Term, from orders *denying* a motion for summary judgment. Thus, the efficacy of summary judgment procedure was not subjected to a true test for the first two and one-quarter years of its existence, and this fact should be borne in mind in a consideration of the facts and figures hereinafter set forth. Since the *Interstate* case, appeals have lain *as of right* from orders denying summary judgments both from the Supreme Court to the Appellate Division, and from the City Court to the Appellate Term. However, an order denying summary judgment in the Municipal Court within the period covered by this study was not appealable to the Appellate Term as of right.

Analyses with Conclusions

Supreme Court, New York County

Before a case appears upon the Trial Term calendar of the Supreme Court, issue must be joined either by defendant's answer to plaintiff's complaint, or by plaintiff's reply to the defendant's answer,

[35] Civil Prac. Act § 609, N. Y. City Ct. Act. § 57.

and then the case must be noticed for trial. The motion for summary judgment may be made at any time after issue has been joined.[36] Under the system prevailing in the Supreme Court and the City Court of the City of New York, an action may be begun by an attorney issuing a summons, and usually until and unless the action is noticed for trial or some incidental court relief is asked no papers need be filed in the court archives.[37] Consequently, an exact apportioning of the number or proportion of tort or contract cases litigated is impossible.

Nevertheless, the Trial Term calendars are some indication of the relative proportion of contract to tort cases. The analysis of the Commission on Administration of Justice made from a study of cases on the Trial Term calendars of the Supreme Court, New York County, as of October, 1930 and October, 1931, indicates that about 30% of those cases are on contract. The total number of new issues placed upon the Trial Term calendar of the Supreme Court, New York County, for the years 1922 through 1930, including those undisposed of on the calendar on January 1, 1922, as well as those restored to the calendar during 1922, was 121,650. Assuming that 30% constitutes the average percentage of contract to total cases on that calendar, the total number of contract cases on the Trial Term calendar for the nine years from January 1, 1922 through 1930, was 36,395.

No one can ascertain or estimate the large number of law suits which the rule has prevented, nor the number of defaults in answering due to the rule, although it is realized that such preventive merit is not the least of the benefits of summary judgment procedure. But, we do know from the official figures that the total number of summary judgment motions made in Special Term, Part III, for the above period, was 4,228 (TABLE III). This figure does not include summary judgment motions made at Special Term, Part I during the three summer months. In other words, the 4,228 motions constitute only about 75% of all summary judgment motions made, assuming that a similar proportion of such motions was made during the summer months as during the balance of the year.[38] Therefore, the total number of summary judgment motions for the nine-year period from October 1, 1921 to January 1, 1931, was probably 5,600, constituting 15.4% of the probable total number of contract cases on the

[36]Saunders v. Delario *et al*, 135 Misc. 455, 238 N. Y. Supp. 337 (1930).

[37]CIVIL PRAC. ACT § 100.

[38]Figures of the Institute of Law, The Johns Hopkins University, for the Supreme Court, New York County, for 1930, show 917 contract cases disposed of by all kinds of motions. Judicial Statistics for that year for Special Term, Part III show 395 summary judgments granted.

Trial Term calendar. These figures assume additional importance when it is realized that before the amendment of the summary judgment rule the motion could be made only in an extremely limited number of contract cases.[39]

Of these 5,600 motions, over 700 were withdrawn or marked off the calendar, indicating either that a satisfactory adjustment had been reached or was despaired of.[40] Of the 4,900 motions remaining, an average of 57%, or 2,800, were granted, and after appeals had been exhausted the ultimate number granted was reduced to 2,774, a total elimination through summary judgment procedure of approximately 3,474 cases.

For the year 1930, the Supreme Court, New York County, Trial Term, with 14½ parts in session, sitting 13,273 hours, disposed of 1,309 trials by jury, 1,161 trials without jury, 8 inquests by jury and 385 inquests without jury, a total of 2,863 cases.[41] The average time per case devoted by Trial Term over the period from 1922 through 1930, lumping together trials by jury and by court alone, and inquests either by jury or by court alone, was 4 hours.[42]

Now, although it is true that we do not know the proportion in which the 3,474 cases eliminated by summary judgment procedure would otherwise have been disposed of, that is, by trial or inquest, by jury or by court alone, and while the time which would have been devoted to their disposition in the absence of summary judgment procedure is unknown, it seems fair to state that summary judgment procedure, 1921 through 1930, eliminated more business than was accomplished by the 14½ parts of the Trial Term of the Supreme Court,

[39]See *supra* p. 237.

[40]Some caution should be used in considering the number of withdrawals of motions for summary judgment as the statistics leave much to be desired. Mr. Cohen (*op. cit. supra* note 31) found that 30 or 12% out of a sample of 250 consecutive cases had been marked off or withdrawn on the call of the calendar in New York County, but does not say how many of these were restored or renewed. The official figures for Supreme Court, for 1923 to 1927 inclusive, indicate that 20% to 25% of the motions were marked off or withdrawn, but that for 1927, 1928 and 1930 only from 2½% to 7% were withdrawn. Concerning the 1923 to 1927 figures, however, it is believed that the truth of the situation is that motions withdrawn and then restored to the calendar were counted more than once. If this is so, the probability is that somewhere between 2½% and 12% of all motions for summary judgment noticed will be withdrawn. No more definite percentage can be stated.

[41]JUDICIAL STATISTICS OF THE SUPREME COURT OF THE STATE OF NEW YORK IN THE FIRST JUDICIAL DEPARTMENT (1930) p. 31.

[42]Figures of the Institute of Law, The Johns Hopkins University, for the Supreme Court, New York County, for 1930 Trial Term, show that 56% of the dispositions in Trial Term were in tort cases and 44% in contract cases.

New York County, for the year 1930, and roughly, was equivalent to about an average full year's work of Trial Term over the period of 1922 through 1930. In other words, about 1/9th or 11% of all Trial Term work of the Supreme Court, New York County, has been eliminated by summary judgment procedure. This, as has been noted, is totally ignoring the tremendous but unascertainable elimination of litigation and interposition of answers due to the fact that the procedure exists.

The figures for 1930 of Special Term, Part III show that 295 motions for summary judgment were heard on oral argument while 367 were submitted without argument, that is, less than 50% were argued orally. The same figures show that the average time for the oral argument per motion heard was about 16 minutes. Thus the total judicial labor involved in the elimination of the 3,474 cases, in disposing of the 5,600 motions, of which 4,900 were either argued or submitted was at the very most 600 hours of judicial court-room time, on the conservative assumption that 50% or 2,450 motions, were argned orally on an average basis of 15 minutes per motion. To this judicial labor in the court of original jurisdiction must be added that of the Appellate Division in handling the 360 appeals which resulted, and that of the Court of Appeals in handling the 39 ultimate appeals which resulted, together with all of the incidental motions concerning such appeals.

The net result, therefore, is that due to summary judgment procedure, disregarding litigation entirely discouraged and suits undefended, and disregarding also the tremendous saving of time to litigants who generally have to await their turn on a congested calendar, there was a *saving:*

Without argument	700 cases
After submission or argument and appeals	2,774 cases
Total	3,474 cases

or, figuring court room time at an average of 4 hours per case, 13,900 hours of Trial Term court-room time.

The total judicial *cost* of this saving was at most some 600 hours of Trial Term court-room time, an unknown amount of chambers time, and the time for handling 360 appeals to the Appellate Division and 39 appeals to the Court of Appeals with the motions incidental to such appeals, a net saving of 13,300 hours of Trial Term time.

Perhaps even more important than the saving of the time of the court is the increase in speed with which a plaintiff may reduce his

claim to judgment due to the summary judgment system. Before Rule 113 was inaugurated, a plaintiff was forced to await his turn on a congested calendar for many months only to have the defendant default when the case was reached for trial. This situation the original Rule 113 alleviated considerably, since the motion for summary judgment could be made at any time after issue was joined.[43] The enlargement of Rule 113 presents far greater possibilities in this direction.

It appears, moreover, that together with an increase in its utilization, the efficiency of summary judgment in the Supreme Court, New York County, has steadily improved. Messrs. Clark and Samenow referring to the figures for Special Term, Part III, for 1926 and 1927 only (TABLE III) say:[44] "the proportion of grantings to denials shows the remedy has not reached the peak of efficiency." The probable meaning of this observation is that for 1926 and 1927 there were too many denials of the motion. The fact that the proportion of summary judgments granted to those denied rose from 58%–42% in 1926 and 54%–46% in 1927, to 61%–39% in 1929 and 1930, indicates that the efficiency of the procedure has improved. The results of appeals to the Appellate Division also speak well for the efficiency of the procedure in the Supreme Court, New York County, since the percentage of reversals of grantings is 28.43% and of denials 23.49%, *i. e.*, 58 of 204 grantings and 39 of 166 denials were reversed by the Appellate Division.

Conclusions With Respect to the Supreme Court, New York County

As the summary judgment remedy has become better known, both its utilization and efficiency have increased in the Supreme Court, New York County. It now appears to be granted with finality in well over 50% of the applications and to have eliminated about 1/9 or 11% of all Trial Term work in New York County, resulting in a net saving of 13,300 hours of Trial Term time in the first nine years of its use. Besides this great saving of judicial time, it has markedly expedited the disposition of cases to the benefit of litigant plaintiffs.

[43]The figures of the Institute of Law, The Johns Hopkins University, for the Supreme Court, New York County, for 1930, show that there were disposed of by defaults of all kinds, 76 tort cases and 4,678 contract cases, while the same authority shows that in the City Court of the City of New York for New York County, there were disposed of by defaults of all kinds, 198 tort cases and 4,322 contract cases.

[44](1929) 38 YALE L. J. 455, n. 3.

Appellate Division of the Supreme Court, First Judicial Department

With respect to the 360 summary judgment appeals from the Supreme Court, New York County, the court of original jurisdiction had granted 199 or 55.28%, and denied 161, or 44.72%. After the respective sifting of the 360 appeals in the Appellate Division and the 39 subsequent appeals to the Court of Appeals, there resulted 173 ultimate grantings and 187 ultimate denials, a proportion of 48.01% granted and 51.99% denied. Of these 360 appeals, the combined effect of the Appellate Division and Court of Appeals was 263 ultimate affirmances and 97 ultimate reversals, 73.06% affirmances and 26.94% reversals. Of these 360 appeals, the Appellate Division affirmed in 265 instances 143 or 71.86% of the 199 granted, and 122 or 75.78% of the 161 denied, and reversed in 95 instances, 56 or 28.14% of 199 granted and 39 or 24.22% of the 161 denied, being 73.61% affirmances and 26.39% reversals.

Of these 360 appeals, the Court of Appeals reviewed 39, rendering 28 affirmances and 11 reversals, 72.79% affirmances and 27.21% reversals. Of the 11 reversals, 9 resulted in denying motions that had theretofore been granted, and 2 in granting motions that had theretofore been denied. In several instances, appeals were dismissed by the Court of Appeals on motion, which left the Appellate Division decision the ultimate disposition.

Conclusions with Respect to Appellate Division of the Supreme Court, First Judicial Department

1. The burden placed by summary judgment procedure upon the Appellate Division, First Department, is quite small, only 2.9% of the total decisions over a nine-year period being concerned therewith, and only 332 pages (total number of pages for Appellate Division, First Department decisions unknown). The burden is minimized to a vanishing point when one considers that without any summary judgment system, the cases concerned would have undoubtedly generated at least an offsetting amount of appellate work. Also a very light burden has been placed upon the court from the procedural aspect of the remedy, which has been settled quickly and with certainty. Almost the entire work comes from the New York County Supreme Court, very little from the Bronx County Supreme Court or the Appellate Term.

2. The proportion of affirmances and reversals of summary judgment motions is not out of line when compared with the proportion of affirmances and reversals to total cases, nor when the affirmances and reversals of motions granted below is compared to the affirm-

ances and reversals of motions denied below. The Appellate Division is slightly more inclined to reverse a summary judgment *granted* below than one denied below, as is shown by its own figures of 28.43% of grantings reversed as compared to 23.49% of denials reversed, and yet the Court of Appeals, on review, seems to have decided that the Appellate Division is not quite strict enough in that regard.

The Court of Appeals

The tables with respect to summary judgment in the Court of Appeals from 1923 through 1931, are sufficiently full to require no particular comment, except to observe that in addition to the 67 appeals there were 18 motions to dismiss appeals concerning summary judgments. Of these 18, 8 were denied. The appeals were later heard or submitted and decided, and are included in the 67 appeals tabulated (TABLE VI). The 10 motions to dismiss appeals which were granted, leaving the Appellate Division decisions below decisive, resulted in the granting of summary judgment in 4 instances and the denial in 6.

Conclusion with Respect to the Court of Appeals

The burden placed by summary judgment procedure upon the Court of Appeals is very small, whether viewed from the number of decisions, 1.4% of the total, or number of reported pages 1.6% of the total, and a very light burden is placed on that court from the procedural aspect of the remedy, which has been quickly settled and with certainty. Furthermore, in the absence of summary judgment procedure at least an offsetting amount of appellate work would undoubtedly have been generated.

Appellate Term of the Supreme Court First Judicial Department

With respect to the Appellate Term of the Supreme Court, First Judicial Department, 1922 through 1930, the manner of arrival of cases was as follows:—

From the City Court of the City of New York, New York County	235
Bronx County (established 1927)	13
Total	248
From the Municipal Court of the City of New York, Borough of Manhattan	562
Borough of Bronx	47
Total	609

The City Court of the City of New York

Of the 248 summary judgment appeals from the City Court, the courts of original jurisdiction had granted 178, or 71.77%, and denied 70, or 28.23%. After the respective sifting of the 248 appeals in the Appellate Term, and the 4 appeals to the Appellate Division, there resulted 148 ultimate grantings and 100 ultimate denials, being 59.68% granted, 40.32% denied.

Of these 248 appeals the combined effect of the Appellate Term, Appellate Division and Court of Appeals was 172 ultimate affirmances and 76 ultimate reversals, 68.35% affirmances and 30.65% reversals.

Of these 248 appeals, the Appellate Term affirmed in 171 instances, 124 or 69.66% of the 178 grantings, and 47 or 67.14% of the 70 denials, 68.96% affirmances and 31.04% reversals.

Of these 248 appeals the Appellate Division reviewed 4, rendering 3 affirmances and 1 reversal, 75% affirmances, 25% reversals. The 1 reversal resulted in the granting of a motion that had theretofore been granted by the City Court and reversed by the Appellate Term.

Of these 248 appeals the Court of Appeals reviewed 1, rendering an affirmance of a motion theretofore granted by the City Court and affirmed by both the Appellate Term and Appellate Division.

For detailed analyses, see tables.

The Municipal Court of the City of New York

Of the 609 summary judgment appeals from the Municipal Court of the City of New York for Manhattan and Bronx Boroughs to the Appellate Term of the Supreme Court, First Department, the courts of original jurisdiction had granted 538 or 88.34% and denied 71 or 11.66%. After the respective sifting of the 609 appeals in the Appellate Term and Appellate Division there resulted 291 ultimate grantings and 318 ultimate denials, being 47.78% granted and 52.22% denied.

Of these 609 appeals, the combined effect of the Appellate Term and Appellate Division was 346 ultimate affirmances and 263 ultimate reversals, 56.81% affirmances, 43.19% reversals.

Of these 609 appeals, the Appellate Term affirmed in 347 instances, 284 or 52.79% of the 538 original grantings and 63 or 88.73% of the 71 denials, 56.98% affirmances, 43.12% reversals.

Of these 609 appeals, the Appellate Division reviewed 4, rendering 3 affirmances and 1 reversal, 75% affirmances, 25% reversals. The one reversal resulted in denying a motion that had theretofore been granted by the Municipal Court and affirmed by the Appellate Term.

Over the period 1922 through 1930, total applications made to the Appellate Division for leave to appeal from determinations of the Appellate Term numbered 1520 of which 225 or 14.83% were granted and 1295 or 85.17% were denied. With respect to appeals from summary judgment determinations of the Appellate Term, the figures show that of 609 such cases arising from the Municipal Court and 248 such cases arising from the City Court, a total of 857, only 8, 4 from the Municipal Court and 4 from the City Court, went to the Appellate Division—less than 1%. Of these 8, 4 (2 Municipal Court and 2 City Court cases) arrived in the Appellate Division by permission of the Appellate Term, and the remaining 4 by permission of the Appellate Division.

From this we may conclude that summary judgments in the Municipal Court and City Court are, for all practical purposes, limited to one appeal.

Conclusion with Respect to the Municipal Court of the City of New York

The figures shown in the foregoing study revealed that, although the summary judgment procedure was highly successful in the Supreme Court for New York County and in the City Court of the City of New York for New York and Bronx Counties, it was a relative failure in the Municipal Court of the City of New York for the Boroughs of Manhattan and Bronx. The study further revealed that the probable cause for this lay in the fact that an appellate review was allowed as a matter of right from a denial of a motion for summary judgment in the Supreme Court and the City Court, but was not so allowed in the Municipal Court. The writer, in his report to the Commission on the Administration of Justice in New York State, therefore presented a complete argument in favor of correcting that situation. Acting upon that report, the Commission recommended and assisted in the adoption by the Legislature and the approval by the Governor of an amendment to the Municipal Court Code remedying this defect.[45]

Conclusion

To conclude, the benefits of the summary judgment seem clearly demonstrated from its decade of trial in the New York courts,—in its tendency to discourage litigation over contracts and the interposition of sham defenses, to effectuate settlements, to expedite judgments and to lessen court congestion—in short, for its marked contribution

[45]Laws 1933, Chapter 351, effective September 1st, 1933, amending Munic. Ct. Code § 154, Sub-div. 6a.

to the cause of speedy justice and the alleviation of the economic waste of unnecessary and protracted litigation.

The summary judgment has not caused any adverse criticism. On the contrary, its scope has been broadened. It is being urged that it be further extended to apply to all actions, regardless of type, equally on behalf of defendants and plaintiffs.[46] A careful statistical analysis of the way in which the amended rule is operating promises to be useful in making a proper decision on that point and in indicating other means of strengthening and improving summary judgment procedure.

Notes on the Following Tables

In connection with the following tables it should be noted that in the Appellate Term, unlike the Appellate Division and Court of Appeals, dismissals and discontinuances before argument or submission are included among figures listed as affirmances. Thus, in the City Court figures, 20 out of 124 grantings affirmed and 6 out of 47 denials affirmed, and in the Municipal Court figures, 30 out of 284 grantings affirmed, and 39 out of 63 denials affirmed were dismissals or discontinuances upon the calendar call.

It should be further noted that modifications have been included under the heading of affirmances.

TABLE I

Number and Disposition of Summary Judgment Motions in Certain Appellate Courts of New York

	Total Appeals	Summary Judgment Appeals	Percentage of summary judgment to total appeals	Number of Affirmances		Number of Reversals	
				Of Grantings	Of Denials	Of Grantings	Of Denials
1923 through 1931 Court of Appeals	4634	67*	1.4	41	3	18	4
1922 through 1930 Appellate Division, First Department	13,417	382†	2.9	146	127	58	39
Appellate Term, First Department a. City Court	2,597	248	9.5	124	47	54	23
b. Municipal Court	12,351	609	4.9	284	63	254	8

*One not decisive.
†Eight from Appellate Term and Four not decisive.

[46] See Finch, New York Law Journal, March 14, 1932, at p. 1393.

TABLE II

Proportion of Grantings to Denials of Summary Judgments Before and After Appeal From 1921 Through 1930

	Grantings		Denials	
	No.	Percentage	No.	Percentage
Supreme Court—New York and Bronx Counties				
Originally	204	55.13	166	44.87
Ultimately	178	48.4	192	51.6
City Court—New York and Bronx Counties				
Originally	178	71.77	70	28.23
Ultimately	148	59.68	100	40.32
Municipal Court—Manhattan and Bronx Boroughs				
Originally	538	88.34	71	11.66
Ultimately	291	47.78	318	52.22

TABLE III

SUPREME COURT

Summary Judgments for New York County, Exclusive of those made during the Summer Recess of Special Term for Trials, *i. e.*, July, August and September

Year	Total Motions on Calendar	Granted	Denied	Withdrawn or Marked Off	Proportion Granted to Denied
1921	12	not available		not available	
1922	174	not available		not available	
1923	447	208	156	83	57-43
1924	546	220	178	148	55-45
1925	511	236	174	101	57-43
1926	571	250	177	144	58-42
1927	433	217	184	32	54-46
1928	393	not available		not available	
1929	474	283	179	12	61-39
1930	667	395	249	23	61-39
Total	4228	1809	1297	543	

It should also be observed that the figures of the Judicial Statistics of the First Judicial Department make no mention of the fact that the summary judgment motions there tabulated for the Supreme Court, New York County, do not include summary judgment motions made during the three summer months when Special Term for Trials recesses, and that therefore only approximately three-quarters of the total number of summary judgment motions made in the Supreme Court, New York County, are tabulated. (Table No. III.)

TABLE IV

Records of Supreme Court Judges Concerning Summary Judgments From 1921 Through the Calendar Year 1930 in the Appellate Division of the Supreme Court, First Judicial Department

Judge's Names	Term of Office	Total Motions Heard Below	No. Cases Appealed	No. Granted Below	No. Denied Below	Affirmances	Of Grantings	Of Denials	Reversals	Of Grantings	Of Denials	Court of Appeals
Bijur	'21–7/8/30	181	9	6	3	7	5	2	2	1	1	
Black	'24–'30	50	9	6	3	7	5	2	2	1	1	1 GAA
Burr	'21–12/1/24	52	9	7	2	9	7	2	0	1	0	3 GAA
Callahan	'27–'30	39	6	4	2	6	4	2	0	0	0	2 GAA
Churchill	1/1/24–'30	41	15	9	6	11	6	5	4	3	1	
Cohalan	'21–1/12/24	44	3	1	2	2	1	1	1	0	1	
Cohn	3/15/29–'30	2	1	1	0	1	1	0	0	0	0	
Collins	12/22/28–'30	20	1	0	1	1	0	1	0	0	0	
Cotillo	'25–'30	78	10	6	4	7	4	3	3	2	1	1 GAA
Crain	1/1/24–9/15/29	73	7	4	3	5	3	2	2	1	1	
Davis	'21–'25	94	9	5	4	6	4	2	3	1	2	1 GAA
Delehanty	'21–'28	144	3	2	1	1	1	0	2	1	1	
Donnelly	'21–11/1/24	5	2	1	1	1	0	1	1	1	0	
Donohue	'21–3/8/28	24	6	3	3	2	0	2	4	3	1	1 GRD
Erlanger	'21–'27	105	10	5	5	6	4	2	4	1	3	1 DRR 2 GAA 1 GRA
Finch	'21–7/25/22	23	4	1	3	3	1	2	1	0	1	
Ford	'21–'30	110	20	14	6	12	7	5	8	7	1	1 GAA 1 GRD 1 GAR
Frankenthaler	'27–'30	107	5	2	3	5	2	3	0	0	0	
Gavegan	'21–'30	73	12	6	6	7	4	3	5	2	3	2 DRA 1 GAA
Gibbs	'25–3/15/29	27	1	1	0	0	0	0	1	1	0	

Giegerich	'21–'25	143	4	2	2	3	1	2	1	1	0	
Glennon	'24–'30	157	5	5	0	5	5	0	0	0	0	1 GAA
Guy	'21–'26	25	4	1	3	4	1	3	0	0	1	
Hammer	'26–'30	36	3	2	1	1	1	0	2	1	1	1 DRA
Hatting	'24–'30	62	10	3	7	7	1	6	3	2	1	1 DRR
Hotchkiss	'21–3/6/22	12	2	0	2	1	0	1	1	0	1	
Ingraham	'24–'30	127	24	9	15	19	7	12	5	2	3	1 DRR
Lehman	'21–'23	27	4	2	2	4	2	2	0	0	2	1 DAR
Levy	'24–'30	248	14	9	5	7	4	3	7	5	2	1 GAA 1 DRA 1 GRD
Lydon	'21–'30	239	10	7	3	6	3	3	4	4	0	
McCook	'21–'30	89	8	3	5	7	3	4	1	0	1	
McGoldrick	3/6/22–'30	72	20	15	5	17	12	5	3	3	0	1 DAR 1 GAR
McAvoy	'21–'22	16	0	0	0	0	0	0	0	0	0	
Mahoney	1/3/23–11/14/28	81	9	7	2	5	4	1	4	3	1	
Marsh	3/17/22–12/31/22	1	1	0	1	1	0	1	0	0	0	
Martin	'21–5/21/23	12	4	2	2	4	2	2	0	0	0	
Mitchell	'21–'30	119	10	6	4	7	5	2	3	1	2	2 GAR
Mullan	'21–'30	128	12	4	8	9	3	6	3	1	2	1 GAA
Newburger	'21–'23	60	5	5	0	2	2	0	3	3	0	
O'Malley	'21–'26	103	3	1	2	3	1	2	0	0	0	1 GAA
Peters	'27–'30	36	5	2	3	4	2	2	1	0	1	1 DRA
Platzek	'21–'24	55	4	2	2	3	1	2	1	1	0	
Proskauer	6/9/23–'26	81	6	3	3	5	2	3	1	1	0	1 GAA 1 GAR
Schmuck	4/10/28–'30	36	8	5	3	6	3	3	2	2	0	
Sherman	'28–3/10/30	27	3	2	1	3	2	1	0	0	0	
Shientag	7/15/30–'30	13	0	0	0	0	0	0	0	0	0	
Tierney	'21–'30	211	6	3	3	5	2	3	1	1	0	
Townley	11/8/26–'30	125	8	2	6	7	2	5	1	0	1	1 DRA
Untermyer	'30	23	0	0	0	0	0	0	0	0	0	
Valente	'26–'30	149	10	3	7	8	3	5	2	0	2	1 DRR 1 GAA
Wagner	'21–5/1/26	180	6	4	2	5	4	1	1	0	1	
Wasservogel	'21–'30	170	11	3	8	8	2	6	3	1	2	1 GRD
Walsh	12/2/24–'30	70	6	5	1	5	4	1	1	1	0	
Whitaker	'21–'23	3	3	3	0	3	3	0	0	0	0	1 GAR
		4228	370	204	166	273	146	127	97	58	39	41

(See page 258 for note.)

No comment is made upon the showing of the individual judges, either in the Supreme Court, City Court or Municipal Court, as revealed by tables numbered IV, VIII and IX, because among other things, there are no common bases for comparison. Thus in the City and Municipal Courts (Tables No. VIII and No. IX) the total number of summary judgment motions decided, granted and denied by each judge is unknown. In the Supreme Court, New York County (Table No. IV) only the total number of summary judgment motions decided by each judge is known, but the number granted or denied by each judge is unknown. The terms of office vary. If the total number of motions heard or appeals taken is small, then the statistics have little meaning; that is, if less than a fair-sized number of appeals per judge are concerned, the proportions are of relatively small importance. And finally, there are many important individual elements to be considered which are wholly outside of what statistics can ever reveal. Therefore, in submitting these figures, interesting as they may be, the writer cautions against their utilization to jump to hasty conclusions.

Note to Table IV

These cases include 360 from New York County and 10 from Bronx County, but exclude 4 cases, 3 from New York, 1 from Bronx, which were not decisive of the motion for summary judgment, and 8 cases from the Appellate Term, First Department, 4 from City Court, 4 from Municipal Court. The inclusion of the 10 cases from Bronx County renders a slight allowance necessary in comparison with total summary judgments heard and decided, set forth in column 2, since the figures in that column do not include motions originating in Bronx County. Further allowances must be made in comparing total appeals taken to total motions made below, since the figures in that column do not include motions made in the courts below from the last week in June to the last week in September. Upon adding the motions made for the three summer months to the figures given in the foregoing table, the percentage of total appeals to total motions will be rendered considerably smaller than is indicated by the table.

GAA equals granted, affirmed, affirmed. GRD equals granted, reversed, dismissed. GRA equals granted, reversed, affirmed. GAR equals granted, affirmed, reversed. DRR equals denied, reversed, reversed. DRA equals denied, reversed, affirmed. DAR equals denied, affirmed, reversed.

TABLE V

Appeals Concerning Summary Judgments Heard or Submitted and Decided in the Appellate Division of the Supreme Court, First Judicial Department, from January, 1922 Through 1930

Year	Total Heard and Decided	Granted and Affirmed by Appellate Division	Affirmed Court of Appeals	Reversed Court of Appeals	Denied and Affirmed by Appellate Division	Affirmed Court of Appeals	Reversed Court of Appeals	Granted and Reversed by Appellate Division	Affirmed Court of Appeals	Reversed Court of Appeals	Denied and Reversed by Appellate Division	Affirmed Court of Appeals	Reversed Court of Appeals
1922	27	10	5		10			6			1		
1923	32	10			12			4			6	1	
1924	32	19	3	1	6		1	5	1		2		
1925	45	16	3		18			8			3		
1926	46	15	2	1	16			8			7		1
1927	50	24	1		10		1	9			7	1	2
1928	46	16	2	1	18			6			6	1	
1929	57	26	2	2	20			7			4	2	
1930	47	15	1	1	20			8	1		4	2	1
Totals	382	151	19	6	130	0	2	61	2	0	40	7	4

TABLE VI

History of Summary Judgment Appeals Reaching the Court of Appeals, 1923 Through 1931

Supreme Court	Appellate Division	Court of Appeals	Denied	Granted	Not Decisive
Granted	Affirmed	Affirmed and Granted		27	
Granted	Affirmed	Reversed and Denied	10		
Denied	Reversed	Affirmed and Granted		14[a]	1
Denied	Reversed	Reversed and Denied	8[b]		
Granted	Reversed	Affirmed and Denied	3[c]		
Granted	Reversed	Reversed and Granted		2	
Denied	Affirmed	Affirmed and Denied			
Denied	Affirmed	Reversed and Granted		2	
			21	45	1

a. Includes 1 case modified by increasing and affirmed and 1 case modified by severing counterclaim and affirmed.
b. Includes 1 case granted in part, reversed and granted in full, reversed and denied.
c. Includes 1 case granted, reversed, and dismissed after argument.
Only 1 case involved an additional intermediate appeal, a City Court judgment granted and affirmed in all courts.

TABLE VII

Comparison Between Total Affirmances and Reversals in the Appellate Term of the Supreme Court, First Judicial Department with Affirmances and Reversals of Summary Judgment Appeals to that Court from the Municipal Court and City Court of the City of New York

Year	Total Appeals		Summary Judgment Appeals			
			Municipal Court		City Court	
	Affirmances	Reversals	Affirmances	Reversals	Affirmances	Reversals
1922	1,502	499	3	7	3	6
1923	1,317	500	25	13	10	3
1924	1,218	515	20	9	14	6
1925	1,173	435	16	9	11	5
1926	1,139	430	41	33	13	4
1927	1,123	513	38	30	18	7
1928	1,296	564	55	36	30	20
1929	1,161	545	65	56	30	10
1930	1,413	729	84	69	42	16
	11,342	4730	347	262	171	77

TABLE VIII

Records of City Court Judges Concerning Summary Judgments From 1921 Through the Calendar Year 1930 in the Appellate Term of the Supreme Court, First Judicial Department

Judge's Name	Total Summary Judgments Heard Below	Cases Appealed	No. Granted Below	No. Denied Below	Affirmances	Of Grantings	Of Denials	Reversals	Of Grantings	Of Denials	Appellate Division
					New York						
Callahan		3	2	1	1	1	0	2	1	1	
Finelite	Figures	7	4	3	7	4	3				1 GAAA
Hartmann	Unobtainable	21	10	11	13	7	6	8	3	5	
Keller		25	22	3	18	17	1	7	5	2	
La Fetra		24	17	7	18	14	4	6	3	3	1 GRR
Lippe		21	15	6	13	10	3	8	5	3	
McKee		5	4	1	3	2	1	2	2	0	
Meyer		18	16	2	12	10	2	6	6	0	
Noonan		5	2	3	4	2	2	1	0	1	
Ryan		18	12	6	12	9	3	6	3	3	
Schimmel		11	8	3	6	3	3	5	5	0	
Schmuck		9	7	2	4	2	2	5	5	0	
Shientag		16	11	5	11	9	2	5	2	3	
Steuer		3	2	1	2	1	1	1	1	0	
Valente		7	4	3	5	3	2	2	1	1	1 GRA
Walsh		8	6	2	7	5	2	1	1	0	
Wendel		34	27	7	24	18	6	10	9	1	1 GAA
					Bronx (est'd 1927)						
Donnelly		4	4	0	4	4	0	0	0	0	
Evans		4	2	2	3	1	2	1	1	0	
Koch		5	3	2	4	2	2	1	1	0	
		248	178	70	171	124	47	77	54	23	4

TABLE IX

Records of Municipal Court Judges Concerning Summary Judgments From 1921 Through the Calendar Year 1930 in the Appellate Term of the Supreme Court, First Judicial Department

Judge's Name	Total Summary Judgments Heard Below	Cases Appealed	No. Granted Below	No. Denied Below	Affirmances	Of Grantings	Of Denials	Reversals	Of Grantings	Of Denials	Appellate Division
					Manhattan						
Abrams		8	7	1	4	3	1	4	4	0	
Blake		3	3	0	3	3	0	0	0	0	
Blau	Figures	7	6	1	2	1	1	5	5	0	
Caffey	Unobtainable	1	1	0	0	0	0	1	1	0	
Chilvers		7	6	1	4	3	1	3	3	0	
Coleman		1	1	0	0	0	0	1	1	0	
Cragen		1	1	0	1	1	0	0	0	0	
Crane		3	2	1	1	1	0	2	1	1	
Davies		9	9	0	6	6	0	3	3	0	
Dineen		4	2	2	3	1	2	1	1	0	
Eder		18	17	1	11	10	1	7	7	0	
Ellenbogen		14	14	0	9	9	0	5	5	0	
Fontanelli		2	2	0	1	1	0	1	1	0	
Friedlander		2	2	0	1	1	0	1	1	0	
Genung		75	73	2	34	32	2	41	41	0	1 GAR
Goldsmith		7	6	1	4	3	1	3	3	0	
Harowitz		10	10	0	7	7	0	3	3	0	
Hayes		22	20	2	13	11	2	9	9	0	
Hetherington		2	2	0	1	1	0	1	1	0	
Hoyer		13	10	3	5	4	1	8	6	2	
Kadien		2	1	1	2	1	1	0	0	0	
Katzenstein		26	23	3	14	11	3	12	12	0	
Keleher		24	22	2	13	11	2	11	11	0	
Kunstler		22	22	0	10	10	0	12	12	0	
Lauer		13	11	2	6	4	2	7	7	0	
Lazarus		23	15	8	13	6	7	10	9	1	
Leary		22	18	4	11	7	4	11	11	0	2 DAA
Lewis		8	7	1	4	3	1	4	5	0	
McTigue		15	14	1	9	8	1	6	6	0	
Marks		9	8	1	5	4	1	4	4	0	

Moore	4	3	1	3	2	1	1	1	0			
Morris D.	5	5	0	4	4	0	1	1	0			
Murray	14	14	0	7	7	1	7	7	0			
Noonan	9	8	1	8	7	1	1	1	0			
O'Neil	2	1	1	0	0	0	2	1	1			
Panken	8	6	2	6	4	2	2	2	0			
Prince	20	14	6	14	8	6	6	6	0			
Raimo	11	9	2	8	6	2	3	3	0			
Rosalsky	19	19	0	9	9	0	10	10	0			
Schimmel	8	8	0	4	4	0	4	4	0			
Shalleck	7	5	2	5	3	2	2	2	0			
Slevin	4	4	0	3	3	0	1	1	0			
Spiegelberg	10	8	2	8	6	2	2	2	0			
Sullivan	14	12	2	6	5	1	8	7	1			
Sulzberger	13	10	3	11	8	3	2	2	0			
Sweedler	4	4	0	2	2	0	2	2	0			
Whalen	6	5	1	6	5	1	0	0	0			
Wilson	20	18	2	13	12	1	7	6	1			
Young	1	1	0	1	1	0	0	0	0			
Unknown	10	8	2	4	2	2	6	6	0	1 GAA		
				Bronx								
Fitzgerald	8	7	1	5	5	0	3	2	1			
Keating	1	1	0	1	1	0	0	0	0			
Morris, W. E.	8	7	1	5	4	1	3	3	0			
Neumann	6	5	1	5	4	1	1	1	0			
Robitzek	2	2	0	2	2	0	0	0	0			
Scanlon	1	1	0	0	0	0	1	1	0			
Shiel	21	18	3	10	7	3	11	11	0			
	609	538	71	347	284	63	262	254	8			

TABLE X

Record of Appeals Concerning Summary Judgments in the Appellate Term of the Supreme Court, First Judicial Department, Appellate Division of the Supreme Court, First Judicial Department, and Court of Appeals, from Municipal Court of the City of New York, Manhattan and Bronx Boroughs, City Court of the City of New York, New York and Bronx Counties, and Supreme Court of the State of New York, New York and Bronx Counties

Year	Appellate Term				Appellate Division		Court of Appeals	
	Total City Court Appeals	No. City Court Summary Judgment Appeals	Total Municipal Court Appeals	No. Municipal Court Summary Judgment Appeals	Total Appellate Division First Department Appeals	No. Appellate Division First Department Summary Judgment Appeals	Total Court of Appeals Appeals	No. Court of Appeals Summary Judgment Appeals
1922	262	8	1544	10	1381	27	—	—
1923	255	13	1419	38	1416	32	538	6
1924	265	20	1357	29	1384	32	261	2
1925	234	15	1231	25	1459	45	548	11
1926	246	17	1238	74	1440	46	474	4
1927	278	24	1213	68	1526	50	566	6
1928	341	50	1373	91	1533	46	609	6
1929	327	40	1448	120	1564	57	528	9
1930	389	58	1528	154	1714	47	530	7
1931	—	—	—	—	—	—	580	16
	2597	248	12351	609	13417	382	4634	67