

BOOK REVIEWS

CALIFORNIA PLEADING. By James H. Chadbourn, Harvey M. Grossman & Arvo Van Alstyne. St. Paul, West Publishing Co., 1961. 2 vols., Vol. 1, pp. xlv, 916, Vol. 2, pp. xli, 927. \$40.00.

I

The vast stimulus given to procedural reform by the adoption of the Federal Rules of Civil Procedure in 1938 and their acceptance in the practice of many states has resulted not only in useful general texts, but in several state practice books outlining the new procedure for the local practitioner which, unlike such books of a prior age, are real contributions to this field of law.¹ There is probably less incentive for a re-examination of practice codes in states which have not yet been greatly affected by the new ideas permeating the courts. But from the standpoint of scholarship and of reform there is perhaps even greater need for such texts in states which have so far resisted substantial change. Hence it is a pleasure to welcome such a satisfactory professional tool as the present one, devoted as it is to the practice of a major state which seems ripe for procedural advance. California was an early exponent of code pleading when Chief Justice Stephen J. Field accepted his brother David's reform of the "Field Code," adopted in New York in 1848, to make it the leading code state of the West as early as 1850 and 1851.² As yet its only essay into the most modern reform of the federal rules appears to be the adoption of some of the party joinder rules in 1927,³ the rule for summary judgments as amended in 1953,⁴ and the discovery rules in 1958.⁵ Professor Chadbourn and his associates do not assume the role of reformers, for their more modest present objective is a book of exposition for the local bench and bar. But as they well

¹ Thus, to cite only a few examples: CLAY, KENTUCKY CIVIL RULES: PRACTICE AND PROCEDURE (1954); FIELD & MCKUSICK, MAINE CIVIL PRACTICE (1959); ORLAND, WASHINGTON RULES PRACTICE (1960); WRIGHT, MINNESOTA RULES (1954); YOUNGQUIST & BLACIK, MINNESOTA RULES PRACTICE (1953).

² Cal. Stats. 1850, ch. 142; Cal. Stats. 1851, ch. 5; Parma, *The History of the Adoption of the Codes of California*, 22 LAW LIB. J. 8, 12 (1929).

³ CAL. CODE CIV. PROC. §§ 378, 379a-379c (on permissive joinder of plaintiffs and defendants, retaining, however, the requirement of an interest in the "subject of the action" for joinder of plaintiffs).

⁴ CAL. CODE CIV. PROC. § 437c, as amended, Cal. Stats. 1953, ch. 908, § 1.

⁵ CAL. CODE CIV. PROC. §§ 2016-2034; Louisell, *Discovery Today*, 45 CALIF. L. REV. 486 (1957). Under rule-making power accorded the Judicial Council, that body has adopted detailed rules for pre-trial conferences and also rules of appellate practice reflecting the influence of Federal Rules 73 to 75. See 1 BARRON & HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE 49 (Wright ed. 1960).

state it, their "approach is intended to be both critical and functional, stressing underlying principles, considerations of policy, and factors relating to the tactics and strategy of pleading."⁶ And they have succeeded so admirably that local practitioners can hardly do without their work. And quite unobtrusively, but nevertheless deftly, in the view of this reviewer at least they have shown that California can do better than it is doing, that the time for improvement is at hand.⁷

It seems desirable at this point to note the coverage offered by these sumptuous volumes. Included are the topics of jurisdiction and organization of the trial courts, venue, parties, and all pleadings — from the complaint through to the answer and cross-complaint. The detail is extensive; thus to the subject of venue are allotted 16 chapters and 334 pages. Not included are discovery, the trial itself, including jury trials, and appeals. Obviously fields yet unharvested lie before the gifted authors.

It is not feasible within the limits of a book review to detail all the highlights or even all the useful features of this valuable work. I shall limit myself to brief mention of a few. Stress may be laid upon the discussion of the theory of the case doctrine, its persistence notwithstanding legislative eradication, and its present probable demise. The code cause of action is realistically treated, as is the ancient code objective of pleading the facts. The same is true of the usual allegations in complaints for negligence, for fraud, for a variety of torts, for contracts, for property rights, and for equitable relief. The ancient demurrer, still a feature of California practice, draws some 18 chapters. A like full treatment is accorded the answer and the counterclaim. Anomalies such as the assumed difference between a counterclaim and a cross-complaint receive appropriate critical treatment. Perhaps as important as any is Chapter 49 on "Planning a Civil Action — The Tactics and Strategy of Pleading," with which Chapter 21 on the "Tactics and Strategy" of venue should be considered — discussions which show the practical nature of the authors' approach and their useful aid to the possibly unsophisticated practitioner.

The authors have expressed a deeply appreciated, if over-generous, indebtedness to the writer for "relentless pursuit" of the goal of pleading rules "definite enough to work and yet flexible enough to do justice."⁸ Elsewhere they have freely cited my discussions of such subjects as the cause of action and pleading facts.

⁶ 1 CHADBOURN, GROSSMAN & VAN ALSTYNE, CALIFORNIA PLEADING, Preface v (1961).

⁷ See, e.g., Goodman, *Should California Adopt Federal Civil Procedure?* 40 CALIF. L. REV. 184 (1952); *Rules of Court Procedure*, 32 CALIF. ST. B. J. 409 (1957); and the present volumes *passim*.

⁸ 1 CHADBOURN, GROSSMAN & VAN ALSTYNE, *op. cit. supra* note 6, Preface vii (1961).

Perhaps I may not be wholly impartial, but to me it seems that they have achieved the objective of a practice work not only complete, but eminently usable in the law office or on the trial or appellate bench. And if in their references to my writings they may have assumed a burden in the eyes of some vocal critics,⁹ I trust that this will be offset, with the California bar, by the compensating advantages I have just noted and here gladly stress.

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II

I examined *California Pleading* for the purpose of satisfying myself with respect to the assistance it would be to a court practitioner or trial judge in dealing with every-day problems of pleadings. My observations are for those who have the same interest. This does not imply that reviewing courts do not have problems of pleading. Quite the contrary. It is through their decisions that the vast body of pleading law has been developed. It will be a continuing process.

The treatise should go far toward restoring the lost art of pleading. No doubt that was what the authors had in mind when they wrote:

It is our purpose, as well as our hope, that this treatise may not only assist the bench and bar in dealing with the day-to-day problems they confront, but that it may also contribute to improvement in the pleading law of California.

They should feel confident that this purpose will be fully realized and that the work will be accepted as authoritative in the office and in the courtroom. In these times when space for books is necessarily limited, one must be critical in choosing from many excellent publications to obtain those will prove most useful. *California Pleading*, I believe, will come first after the codes. It will save those who are new in the practice from learning pleading the hard way — by trial and error. On the other hand the older practitioner, even though he has broad experience in the subject, will discover he has something yet to learn. Every so often one will encounter

⁹ See, e.g., Dawson, *The Place of the Pleading in a Proper Definition of the Issues in the "Big Case,"* 23 F.R.D. 430; McCaskill, *The Modern Philosophy of Pleading: A Dialogue Outside the Shades*, 38 A.B.A.J. 123 (1952); Tucker, *Proposal for Retention of the Louisiana System of Fact Pleading*, 13 LA. L. REV. 349 (1953).

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