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An Act to Amend the Civil Practice Act in Relation to Joinder of Parties and Causes of Action

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Under Section 2116 a procedure is delineated which includes the method of payment. Punishment for violations of the Act are set at whatever the punishment is for a contempt of such court or probation order in any proceeding cognizable by such court.[15]

Section 2117 describes the duties of the petitioner's representative; 2118 provides that this Act shall be an additional remedy in no way impairing existing remedies, civil or criminal.[16] Section 2119 provides for a uniform interpretation, and finally Section 2120 orders that any invalidity adjudged by a court of competent jurisdiction shall apply only to that part of the Act involved leaving unaffected all other portions.[17]

Doubtlessly when the uniform Act is submitted to the acid test of judicial construction minor flaws will be discovered which will make revision necessary. Already one such flaw has been discovered, and it is a source of serious annoyance in the New York area at least. The definition of state in the Act read, ". . . shall mean and include any state and territory of the United States and the District of Columbia." Overlooked in this definition was the technical distinctions between territories of the United States and possessions. The Kings County District Attorney's office is already concerned over this problem for in New York's heterogeneous population, there are many former residents of United States possessions.

However, on the whole the Act is carefully drawn and except for one fact would undoubtedly solve the problem. The heart of the Act is its reciprocity; and it is immediately apparent that while there remains only one state yet to enact the law the remedy cannot be completely effective, for to that one state will flock all the errant husbands.[18] Indicated, therefore, is the strong and steady exertion of public opinion upon the various state legislators to hasten the passage of this salutatory law which various private and semi-public organizations, taking the initiative, have introduced in the respective states.

HAROLD V. MCCOY.

AN ACT TO AMEND THE CIVIL PRACTICE ACT IN RELATION TO JOINDER OF PARTIES AND CAUSES OF ACTION.—The New York Legislature, in March, 1949, enacted a law [1] amending the Civil Practice Act with respect to permissive joinder of parties, which was for-

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[15] *Id.* § 2116.
[16] *Id.* §§ 2117, 2118.
[17] *Id.* §§ 2119, 2120.
[18] So far the Act has been enacted in Indiana, Iowa, Oklahoma, Maine, New Hampshire, New Jersey, Illinois, Delaware and New York. In addition the Virgin Islands have adopted the law.

[1] Laws of N. Y. 1949, c. 147.

merly dealt with in Sections 209, 211, 212, 213 and 216 of the Civil Practice Act. The extent of this legislation was the repeal of all the above sections, except 212, which was amended to read as follows:

> PERMISSIVE JOINDER OF PARTIES. 1. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them would arise in the action. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief.
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> 2. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them would arise in the action. Judgment may be given according to their respective liabilities, against one or more defendants as may be found to be liable upon all of the evidence, without regard to the party by whom it has been introduced.
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> 3. It shall not be necessary that each plaintiff shall be interested in obtaining, or each defendant be interested in defending against all the relief demanded, or as to every cause of action included in any proceeding; but the court may order separate trials or make such other orders as will prevent a party from being prejudiced, delayed, or put to expense by the joinder of a party against whom he asserts no claim and who asserts no claim against him.

In the same enactment, Section 258 of the Civil Practice Act, which permits joinder of causes of action, was also amended to read as follows:

> JOINDER OF CAUSES OF ACTION. The plaintiff may *join* in the same complaint two or more *independent or alternate* causes of action, *regardless of consistency,* whether they are such as were formerly denominated legal or equitable, provided that upon the application of any party the court may in its discretion direct a severance of the action or separate trials whenever required in the interests of justice. *There may be a like joinder of causes of action when there are multiple parties and the requirements for joinder of parties satisfied.* (Amended matter in italics.)

This legislation, which became effective on September 1, 1949, was the result of a study and recommendation made to the legislature by the Judicial Council of the State of New York.[2]

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[2] N. Y. JUDICIAL COUNCIL REPORT, LEG. DOC. No. 18, p. 56 (1949).

The amendment effects no change in the existing law of this state, but is simply a codification of the decisional law on the subject. The new Section 212, by its integration of all the provisions relating to permissive joinder of parties, plaintiff and defendant, eliminates the necessity of having a multiplicity of sections.

Section 258 of the Civil Practice Act, as amended, merely puts into statutory form that which has been the law, by expressly authorizing the joinder of inconsistent or alternative causes of action. By expressly authorizing joinder of causes of action where there are multiple parties, it adopts the view of the New York Court of Appeals [3] and settles conclusively the doubt created by the case of *Ader v. Blau.*[4]

This act, dealing with permissive joinder of parties and causes of action, is a forward step in the New York Judicial Council's efforts to streamline our law by eliminating outdated and useless statutes, and consolidating and clarifying the others. For its model, it has chosen the most concise, but very effective, Federal Rules of Civil Procedure.[5]

LOUIS E. MATTERA.

THE 1949 REVISION OF THE MEMBERSHIP CORPORATION LAW IN REGARD TO CEMETERY CORPORATIONS

Historical Background

"The People of this State have a vital interest in the establishment, maintenance and preservation of burial grounds and the proper operation of the corporations which own and manage the same." [1] While this maxim has been true from time immemorial, the people through their public officers have been lax in assuring the bereaved of solace and comfort at time of death. Because of inadequate laws, or impossibility of enforcing those existing,[2] a certain group of individuals have been allowed to take advantage of persons mourning

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[3] Great Northern Telegraph Company v. Yokohama Specie Bank, 297 N. Y. 135, 76 N. E. 2d 117 (1947).

[4] 241 N. Y. 7, 148 N. E. 771 (1925). This was a wrongful death action against one defendant for erecting and maintaining an iron picket fence said to be an attractive nuisance, which was alleged to be the sole cause of the death of plaintiff's intestate, and against the physician, for negligent treatment of the intestate, which negligence was alleged to be the sole cause of the intestate's death. The court denied the plaintiff the right of joinder.

[5] FED. R. CIV. P., 20. (Also adopted by Arizona, Colorado, New Jersey, New Mexico and Texas.)

[1] Laws of N. Y. 1949, c. 533.

[2] Application of Kensico Cemetery, 193 Misc. 479, 83 N. Y. S. 2d 73 (Sup. Ct. 1948).