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The Present English System of Pleading

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By John H. Denison, Associate Justice Supreme Court of Colorado

I do not remember seeing or hearing a public statement which showed, concretely, that is with illustration or example, what the present English system of pleading is like. The bar of this state cannot intelligently decide whether the adoption of any portion of it is desirable until they know somewhat more of what it really is.

I have owned for a dozen years a copy of "The Annual Practice," a book in common use in England, corresponding roughly to our annotated code. I never heard of another copy in Colorado and I believe there is none. No one beside myself ever read this copy, so far as I can remember, except Judge Butler of the District Court; so its revelations will be novel if not otherwise interesting.

There are two opposite theories as to the statement of a cause of action or defense. One is the ostensible theory of our Code of Civil Procedure, i. e., that the pleader should state in his own ordinary concise language the material facts which constitute his cause of action or defense; the other is that every cause of action or defense is capable of statement in a prescribed form, and, for reasons of expediency, should be thus stated. A little thought shows that there is logically no middle ground between these two theories, though in practice, in any system, they are often used together.

The belief that actuated the proponents of the code was that it would do away with the outworn technicalities of the common law system, and their belief was justified by the event; but what they did not foresee was that in escaping from the ills they had they were flying to others that they knew not of. There is a proverb concerning the frying pan which expresses the idea more tersely. The technicalities of code pleading are not fewer but merely different from those of the older system. Some twenty-five per cent of the time of this court is spent in the consideration of those technicalities. The reason is that, while the system is logically perfect the pleaders are not. The effect is to multiply errors; each man going unguided on his own conception of what is material, what is concise, what is ordinary, and what is necessary or desirable in other respects.

The English "Rules of the Supreme Court," where our code says "ordinary concise language," say "as brief as the nature of the case will admit;" they then prescribe a set of forms of "statements" (i. e., complaints) and defenses (i. e., answers) and replies (i. e., replications) the use of which is made practically compulsory by order XIX, Rule 5, which says they shall be used when applicable (and when not, forms of like character) and "where such forms are applicable and sufficient any longer forms shall be deemed prolix and the costs occasioned by such prolixity shall be disallowed or borne by the party using the same." Pleading of matters of law or evidence is expressly forbidden.

The effect of this system is to avoid mistakes and they are very rare. Every pleader, in an ordinary case, has a sure direction which is a guide in an extraordinary one. Let us look at a few examples.

Here is a form of statement in the Chancery Division in a suit for dissolution of partnership:

In the High Court of Justice,
Chancery Division.
Writ issued Jan. 15, 1924.
Between John Smith, Plaintiff,
and
Thomas Jones, Defendant.

1. The plaintiff on Dec. 1st. 1923, entered into a partnership with the defendant for ten years.

2. That the defendant has broken the partnership articles as follows:

a. He has failed to furnish the capital of £10,000 as agreed.

b. He has not devoted the whole of his time to the business of the partnership as agreed.

c. He has drawn out of the partnership more than £100 per month.

The plaintiff claims

1. Dissolution.
2. An accounting.
3. A receiver.

.....
Solicitor for Plaintiff.

Here is one for money had and received:

The plaintiff's claim is for money received by the defendant for the use of the plaintiff.

Particulars:

July 29, 1924, the price of one horse of the plaintiff sold by defendant	£110
Jan. 1 to Aug. 31, 1924. Rents collected by deft for plaintiff..	86
Amount due	£196

On a promissory note

The plaintiff's claim is against the defendant as a maker of a promissory note for £250 dated January 1st, 1924, payable to plaintiff six months after date.

Particulars:

Principal	£250
Interest	10
Amount due	£260

For deceit

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the good will and lease of the George public house, Stepney, by fraudulently representing to the plaintiff that the takings of the said public house were £40 a week whereas in fact they were much less, to defendant's knowledge.

Particulars of special damage, if any:

The plaintiff claims..... £800

Negligence.

The plaintiff has suffered damage from personal injuries to the plaintiff and damages to his automobile caused by the defendant or his driving servant on the first day of January, 1925, negligently driving an automobile on Larimer street, Denver.

Particulars of expenses:

Charges of Dr. A. B. Smith, Surgeon	$150
Charges Miss Jones, Nurse	67
Charges James Jackson, Garage.	200
	$417

The plaintiff claims.....$5,000

The salient characteristics of these forms are brevity and practicability. They are short and they work. They are what we ought to expect of the English mind which is practical to the last degree. Indeed it is true, tho paradoxical, that the old fictions of English pleading were kept alive by this quality of mind. They worked and were familiar and so easy to use for the sophisticated. What more do you want?

The defenses are still more simplified and brief, e. g.

In a suit for foreclosure of a mortgage

1. The defendant did not execute the mortgage.

2. The debt is barred by the statute of limitations.

3. Payments have been made, viz.:

Jan. 20th, 1924	$1,000
Apr. 10th, 1924	26

In a suit in ejectment or for possession of personalty:

1. The defendant did not withhold possession.

2. The deft withheld possession on the following grounds:

(specify the grounds)

On Bills and Notes:

1. The deft did not accept the bill.

2. The deft did not make the note.

No. 3. The bill was not presented for payment. No. 4. The bill was accepted for the accommodation of defendant without consideration.

General Defenses

Accord and Satisfaction.

1. On April 5, 1924, a brown horse was delivered by the defts, and accepted by the plaintiff in discharge of the alleged cause of action.

2. The defendant became bankrupt.

3. The defendant was an infant at the time of making the alleged contract.

4. The 12th section of the statute of frauds has not been complied with.

For Assault and Battery

1. The defendant did the acts complained of in necessary self defense.

Negligence

1. There was contributory negligence on the part of plaintiff (or pliff's servant).

Replies are equally terse.

The plaintiff as to the defense says that,

1. As to the first paragraph of the defense: (We would say the first defense of the answer) he joins issue.

There is no demurrer. Issues of law are raised otherwise, e. g., in the answer on a guarantee.

The defendant says that

1. The goods were not supplied to E. F. on the guarantee.

2. The defendant will object that the guarantee discloses a part consideration on the face of it.

The second paragraph raises the question which he should raise by demurrer.

There is, of course, much more of interest but enough is now quoted to show how simple, direct and informal are these methods; we should expect to see speed and efficiency result and such is the case. They have been in use for about fifty years with few amendments and the time and expense between commencement and trial has been greatly reduced, whereas our codes have increased them. What is the cause? Doubtless there are several, but doubtless also the requirements of brevity and the concrete examples of brevity, shown to the pleaders in these forms, were potent if not the principal causes of the reduction and the leaving of each pleader, learned or unlearned, wise or ignorant, to his own devices is the chief cause of the increase.

JOHN H. WIGMORE COMING TO DENVER

Our Banquet Committee has been exceedingly fortunate in securing John H. Wigmore, Dean of Northwestern University Law School, Chicago. Dean Wigmore will give two lectures here the later part of May. The first of which will be preceded by a fine banquet, the other, probably thrown open to the public. Full details will follow later. This banquet will be in charge of Hugh McLean, Chairman.

REMOVAL NOTICES

Si Quiat, member of the firm of Quiat and Ginsberg, is now located in the Wyoming Building, 14th and Champa.

Henry J. Hersey, for the past six years District Judge, announces that he has resumed the practice of law with law offices at 703-710 Symes Bldg., Denver, Colorado. Telephone Main 6526.

Edward D. Upham announces the removal of his law offices to 727 and 729 United States National Bank Building. New Telephone number Main 6028.

A LAWYER'S FINANCIAL STANDING

(Contributed by V. H. Miller)

"Years ago when Lincoln was practicing law in a small town in Illinois he was requested by a correspondent to give a report of the financial condition of a brother lawyer of that town and that great and humorous man wrote: This lawyer has a fine wife and daughter, worth perhaps a million dollars; he has a desk and two chairs, and rat hole in the corner of his office. The furniture is worth about $15.00. I don't know what the rat hole is worth."

WHO HAS THEM?

An invoice of the library of the District Attorney's office shows that the following books are missing from the shelves:

4 J. J. Marshall (Kentucky).
12 Nevada.
Appeal Cases 1918 (English).

Should any of the members of the association, or others, have knowledge relative to the whereabouts of these books the District Attorney would appreciate that information or their return to his office in the West Side Court.

NEW CHILD BORN

The Colorado Bar Association has appointed Henry Toll Editor, and Hamlet J. Barry and Jacob V. Schaetzel as Associate Editors of its new publication, "Bar Notes." The Board of Editors is now looking for material and if the 225 or thereabouts members of the Denver Bar Association, who belong to the State organization, will write an article the editors will be exceedingly glad. Mail your contributions to any one of the three.

"BOY, PAGE THE CRIME COMMISSION"

Visitor to Denver County Jail: What terrible crime has this nice looking man committed?

Warden Clennan: He didn't commit any crime at all. He was going down the street a few days ago and saw one man shoot another, and he is held as a material witness.

Visitor: And where is the man who committed the murder?

Warden: Oh, he is out on bail.