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THE NEW PRACTICE IN NEW YORK

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The new practice is not designed for the benefit of the legal profession, but it is expected that it will redound to their advantage. It has not been framed for the purpose of increasing the power of the judges of the state, although it vests a wider discretion in them with respect to procedure, but, on the contrary, it will prevent them from shifting the responsibility for any technical decisions on mere matters of practice. Its purpose is to make the administration of justice more speedy, more certain and less expensive and thus advance the interests of the entire people of the state.[2]

[1]Chairman of the Board of Statutory Consolidation of the state of New York. The Board of Statutory Consolidation of the state of New York was created by chapter 664 of the laws of 1904. The original board consisted of Adolph J. Rodenbeck, John G. Milburn, William B. Hornblower, Judson S. Landon and Charles Andrews. Judge Andrews did not qualify and Adelbert Moot was appointed in his place. Judge Landon died and the remaining members of the board prepared a consolidation of the general statutes of the state and a statutory record of the general statutes and also of the special, private and local statutes. Mr. Hornblower was appointed a judge of the court of appeals and resigned from the board and Charles A. Collin was appointed in his place. The board as thus constituted prepared a report on a plan for the simplification of the civil practice in the courts and a report carrying out this plan was presented to the legislature of 1915, pursuant to chapter 713 of the laws of 1913. This report of the board is now being considered by a joint committee of the legislature and by committees of the various bar associations of the state.

[2]It is not possible within the limits of this article to illustrate the new practice by extensive abstracts from the Civil Practice Act and Civil Practice Rules. Those who desire to make a closer study of the subject are referred to the report of the Board of Statutory Consolidation, in three volumes, transmitted to the legislature of the state of New York, April 21, 1915. The two following provisions from the Civil Practice Act are inserted here merely as illustrative of the extent to which the board has gone in order to secure a prompt and efficient determination of legal controversies:

"A person claiming to be interested under a deed, will or other written instrument, or in the enforcement of a statute or municipal ordinance, may apply to the supreme court or a judge thereof by 'summons to appear' for the determination of any question of construction or validity arising under the instrument, statute or ordinance, and for a declaration of the rights of the persons interested. The court or a judge may direct such persons to be served with the summons as may seem necessary. The application shall be supported by such evidence as the court or judge may require. The court or judge shall not be bound to determine any such question of construction if it ought not to be determined in such manner." (Civil Practice Act, § 57).

"Parties may submit to a trial court or judge having jurisdiction of the subject in controversy a matter in difference between them in person or by attorney upon oral or written pleadings or statements to be tried by the court or set down for trial before a referee or arbitrator or before a jury under such procedure as to evidence and appeal and otherwise as may be agreed upon." (id., § 58).

There is no part of the community that will not be benefited by this reform. All classes are affected by the character of the courts and the performance of the duties vested in them. Justice has been described as the greatest concern of man. Without it this state and this nation would not long endure. When justice fails, the confidence and respect of the people for the government vanishes and a spirit of anarchy must follow a feeling of disrespect and lack of confidence. It has been said that a nation is as strong as the faith of its citizens in its courts and that its character is to be judged by the manner of the enforcement of its laws.

Take away the administration of justice in the courts and you remove the very foundations of government. It is the balance-wheel that controls and governs the other departments. This was well recognized by the framers of our constitutions. The function of our courts in the interpretation of constitutions and statutes is pointed to as the distinguishing feature of the American government and the main source of its strength. Checks and balances have been imposed upon the operations of other departments and the courts have been placed above them as an umpire to see that those limitations are not exceeded. The genius of the framers of the federal constitution would have gone for naught but for the wisdom of the great lawyers and the great judges who interpreted that document. It was the spirit of their interpretation which gave it life. Without their genius it would have been as rigid as the dry bones of the human body. They gave it virility and made it a living thing by adjusting it from time to time to new conditions without which it would have been a mere scrap of paper.

It is in the courts and in the procedure in the courts that the hope of the future lies. Physical violence between the citizens of a state is obviated by the establishment of courts for the administration of justice, backed by adequate authority for the enforcement of their judgments, and international disputes will likewise come to an end when there shall be established an international tribunal with power enough back of it to enforce its decrees. Without such an international court irreconcilable controversies must be settled by force of arms and the breaking down of the faith of the people in municipal courts is but a step toward arbitration and finally to war itself. How important it is, therefore, for all, laymen as well as lawyers, to see that the courts are made the true ministers of justice.

This subject has played a most conspicuous part in the history of all peoples. Their progress toward a higher civilization may be

traced in the history of their procedure for the administration of justice. As we look back upon the early periods of jurisprudence it seems to us impossible that any people could have administered justice according to the crude methods formerly employed and we wonder at the time that it has taken to throw off the old ideas and to reach the present stage of development which advanced students of jurisprudence believe will be succeeded in its turn by more simple and more certain methods of procedure.

In this state we adopted the common law procedure of England. There was nothing else to do. Even the genius of the framers of our state government was not equal to the creation of a new procedure. They accepted what they were accustomed to and endeavored to adjust it to the atmosphere of the new institutions which they had erected. It was soon found to be cumbersome, technical and unwieldy and, inspired by a great genius, a new procedure was enacted by statute after more than fifty years of experience with the common law procedure.[3]

This code did not cover the entire field, leaving many matters still regulated by other statutes of the state, and in 1876 and again in 1880 statutes were passed which sought to bring within the covers of a single book all of the general procedure in the courts of the state.[4]

The material was not systematically arranged and committed the fundamental error of combining substantive law and adjective law in the same provisions. Criticisms which were made at the time of its adoption have continued since with increasing volume until there is now a general demand that the procedure of our courts should be simplified and adjusted to the conditions of modern life.

The state has gone through its common law period of procedure, its mixed common law and statutory period and its statutory period of code procedure. It now stands at the threshold of a new procedure under which a wider discretion shall be vested in the courts over the details of procedure, leaving them to direct their attention almost exclusively to the substantive rights of the parties. There has been a general drift toward this method of procedure not only in this state but elsewhere. While the state of New York set the

[3]The Code of Procedure was enacted in 1848 (ch. 379) and consisted of 391 sections. It is known as the Field Code, after its chief author, David Dudley Field.

[4]The first thirteen chapters of the Code of Civil Procedure were enacted in 1876 (ch. 448) and the remaining chapters, fourteen to twenty-two, in 1880 (ch. 178). The additional chapter and articles have been added since that time, so that in 1909 before the removal of any of its sections by the Board of Statutory Consolidation it contained 3384 sections.

pace for judicial reform in the middle of the last century, it took a backward step in the latter half of that century and it has since been outstripped by other jurisdictions.

An advance has been made along the line of subordinating procedural rights to substantive rights. It is not more than a century ago that the distinction was first emphasized between substantive and adjective law, the latter being regarded as a right as important as the former. It was only with the lapse of time that procedure was recognized as a mere method for determining the substantive right. In recognition of this idea, in many jurisdictions procedure is now regulated by the courts and not by the legislature. Rules of court have superseded and are superseding rules of the legislature. This change in the system of procedure was largely due to the recognition of the subordinate character of adjective law and to the rigidity of procedure regulated by statute.

Where the procedure is regulated by statute the courts are powerless to deviate from the rules thus laid down and the procedure must necessarily become a matter of right. That system also enables the courts to avoid coming to the merits of a controversy and is productive of delays by multiplying adjudications upon matters of procedure. It is easier to decide questions of procedure than to pass upon the rights of the parties. It is for these reasons that we have had so much procedural law under the present system of statutory regulation of procedure. The system of statutory rules also encourages a resort to other means for deciding controversies between citizens. The growth of committees and boards of arbitration are an evidence of the insufficiency of the courts and a protest against the existing court procedure.

It seems imperative that some reform should be made, not alone in the interest of the bench and bar, but in the interest of those who have the occasion to resort to the courts for the enforcement of their substantive rights. In bringing about such a reform in this state, the code of civil procedure occupies the center of the stage. In common law states the adoption of a statute on the subject of procedure may bring about the necessary reform. Not so in this state where the practice is regulated substantially by the code of civil procedure.

The placing of plasters and bandages here and there on the code of civil procedure will not remedy the disease. Some more radical treatment is necessary. In the first place a surgical operation must be performed, consisting of the removal of the substantive law which all students of procedure admit has no place in a code of procedure.

This idea did not always prevail, but it has come to be recognized as one of the first rules of judicial reform. The separation, however, of the substantive law from the code of civil procedure would leave that statute an unrecognizable conglomeration of disjointed provisions. The removal of the substantive law would require a rearrangement of the adjective law and such a rearrangement by bringing together related provisions, would emphasize the inharmonious character of those provisions and make necessary a consolidation. After this operation had been performed there would still remain a body of fixed statutory rules illy adapted to the speedy enforcement of legal rights. The board removed the substantive law from the code and attempted to consolidate and arrange the remaining provisions according to a logical classification, but soon reached the conclusion that this change was inadequate to bring about the reform in procedure that was necessary to make the courts an effective instrument for the adjudication of legal controversies.[5]

The first step that was regarded as necessary was the substitution of rules of court in place of rules of the legislature and the underlying principle of this change is that of flexibility in procedure.[6] This flexibility is accomplished by vesting in the courts control of procedure—not an absolute control but a limited control—limited by the constitution and by the legislature. This is not an extraordinary power, since the courts now possess the authority to make rules of court. It is merely the adjustment of the regulation of procedure by placing the control of the details of procedure in the courts, subject to regnlation as to jurisdictional and fundamental matters by the legislature. Under the proposed change the people still control the procedure of the courts through the legislature, but power is delegated to the courts to adopt rules to regulate the details of procedure. The constitution, the legislature and the courts all have a hand now in

[5]The Board of Statutory Consolidation having removed substantive provisions from the Code of Civil Procedure, prepared a rearrangement of the remaining provisions of the Code according to the steps in the progress of an action. This rearrangement was printed but it was found to be impracticable to use it as a basis for the preparation of the rules of court, except for the suggestions that the provisions contained.

[6]"The procedure in the courts governed by this act shall be according to this act and rules of court to be made and modified from time as herein provided; and in cases where no provision is made by a statute or by rules the proceedings shall be regulated by the court or judge before whom the matter is pending." (Civil Practice Act, § 5).

"Non-compliance with any of the Civil Practice Rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court or judge shall think fit." (id., § 8).

regulating procedure, the controlling authority being in the constitution, the dominating power being in the legislature and the least jurisdiction being in the courts. The proposed system changes this distribution by delegating to the courts the power to regulate the details of procedure, subject to constitutional and statutory restrictions.

It is not always easy to draw the line between those provisions that should be left to the courts for regulation and those that should be left to the legislature. There is a "twilight zone" which is hard to define. Nevertheless, there are abundant provisions which it is an easy matter to distribute to one of these two departments. The doubtful cases must be determined by reference to the state and federal constitutions guaranteeing certain procedure. Every citizen, for instance, is entitled to the right to trial by jury in certain cases of which he cannot be deprived either by the legislature or by the courts. So, too, the federal constitution guarantees to every citizen that he shall not be deprived of life, liberty or property without due process of law. This means that the court must have jurisdiction of the subject matter,[7] the parties must have a reasonable legal notice with a reasonable opportunity to be heard[8] and the judgment must be confined to the issues presented by the parties.[9] These principles control the procedure in all the states. Where they are present other matters are subordinate and may well be regulated by the courts and be subject to modification as the interests of justice require. Under the new practice, however, the courts are further controlled by all statutory enactments both substantive and adjective. The consolidated laws contain substantive and adjective law binding upon the courts and the proposed civil practice act especially gives direction to and controls the body of the law by procedure. Thus it will be seen that, while a flexibility is obtained by the establishment of rules of court, the courts are not given an absolute, unlimited and unrestricted control, but are made subject upon jurisdictional and fundamental matters to both the statutes of the state and to the state and federal constitutions. This principle of flexibility obtained by regulating procedure by rules of court is one which is in force in other jurisdictions and is a distinct advance in the development of procedure, which can be traced in the history of the administration of

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[7]Scott v. McNeil, 154 U. S. 34.
[8]Pennoyer v. Neff, 95 U. S. 714; Roller v. Holly, 176 U. S. 398; Windsor v. McVeigh, 93 U. S. 274.
[9]Reynolds v. Stockton, 140 U. S. 254.

justice, just as our present methods of procedure are an advance upon former methods which recognized trial by wager, trial by battle and other antique forms which are now looked upon as absurd relics of a worn-out and discarded procedure.

The application, however, of the principle of flexibility of procedure will not alone produce the complete reform that is demanded. A procedure may be flexible and yet it may be as diverse as was the common law procedure. That procedure was regulated by the courts but it was not by stated rules of courts, as is proposed by the new system. That practice was embalmed in the decisions of the courts and, like the common law bearing upon substantive rights, it was hard to find and varied with each particular case. Under the proposed system, while the stated rules will not control the courts, they will be expressed in terms binding upon the courts, except where a variance is necessary in the interest of justice. The diversity of the common law procedure must be avoided and this is accomplished by the application of the principle of uniformity of procedure.[10] This principle, like that of flexibility, is a dominant characteristic of the new procedure. Under the code there are provisions applicable to actions generally, those applicable to special actions and there are special proceedings which conform to the provisions applicable to neither of the foregoing.

Under the new practice there will be but one form of action.[11] Such special proceedings as are now found in the code will be changed into the form of actions, that is, the relief now obtainable by special proceedings will be obtained thereafter by a procedure similar to that which governs an ordinary action. When the practitioner has learned the procedure applicable to one action he has acquired a knowledge of the procedure in all actions. The procedure under the new practice for the enforcement of any right is the same. It is commenced by a summons followed by a complaint and such necessary reply or subsequent pleading as the case or the court may require.

[10] "The practice in the courts shall be made as uniform as possible, and general provisions applicable to more than one step in an action shall be broad and liberal in terms, shall omit minute details, contain as few exceptions as possible and leave as wide a discretion in the courts as practicable." (Civil Practice Act, § 9).

[11] "There shall be but one form of civil action under this act in all the courts subject to this act which shall be called an 'action' but this provision shall not apply to proceedings otherwise specially regulated by other statutes which shall be called 'special proceedings.'" (Civil Practice Act, § 4).

The same principle of uniformity has been applied to the rules relating to joinder of parties.[12] It is often a perplexing question to know what parties to join as plaintiff or defendant in an action. That complication has been removed by the new practice. All parties may be joined in favor of or against whom any relief is sought, whether they be severally or jointly liable and, where there is a doubt as to the liability, even in the alternative. No action can fail for defect of parties. Where a party has been improperly joined, he may be relieved upon motion and where a separate trial of any interest is necessary such a trial may be had.

The same rule has been applied to the subject of joinder of causes of action.[13] Any cause of action may be joined with any other cause of action. Under the new practice no action can fail because causes of action have been joined which cannot be tried conveniently together. Where such a situation arises, separate trials may be had upon motion but the joinder of causes of action cannot, as now, become the subject substantially of an independent litigation over procedural rights.

One motion for preliminary relief has been provided.[14] This idea is the one that is so conspicuous in the English practice. Subse-

[12]"The joinder of all parties plaintiff and defendant claiming an interest in the subject of the action, whether jointly, severally or in the alternatives, shall be permitted subject to an order for a separate trial as to any party and to suitable penalties for misjoinder. The people of the state may be made a party defendant in actions or proceedings affecting real property in which the people have an interest." (Civil Practice Act, § 20).

"Every action shall be prosecuted in the name of the real party in interest, but an executor, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute, may sue in his own name without joining with him the party for whose benefit the action is brought; but, at any stage of the action, any persons may be brought in as parties, either in addition to or in place of the previously existing parties." (id., § 21).

"No action shall be defeated by the non-joinder or misjoinder of parties; but new parties may be added and parties misjoined may be dropped, by order, at any stage of the cause, as the ends of justice may require." (id., § 22).

"Where a complete determination cannot be had without the presence of other parties, they shall be brought in and where a person, not a party, has an interest or title which the judgment will affect, he shall be made a party." (id., § 23).

[13]"All kinds of causes of action or counterclaims may be set up in the same complaint or answer, subject to an order for a separate trial of any issue, where it may be deemed expedient or necessary. No action or defence shall fail in whole or in part because a party has an adequate remedy at law therefor; but the court may grant such relief in law or equity, with or without a jury as the case and justice may require." (Civil Practice Act, § 19).

[14]"Suitable rules shall provide for the summary disposition of all matters of procedure subsidiary to the actual controversy between the parties." (Civil Practice Act, § 31).

"The general motion to determine the preliminary relief to which a party is entitled before trial shall be made mandatory as to all such matters including pleadings, parties, admissions, discovery, interrogatories, inspection, commissions, examinations and place and mode of trial, subject to rules as to appeal and subsequent relief upon terms." (id., § 32).

quent motions may be made for preliminary relief and may be granted upon terms. The ensign, however, is to have all such applications made at one time with one appeal from the order granting relief. Under the present system each motion may assume the importance of the main litigation and may delay the final determination in complicated cases for an uncertain time. These matters being regulated by statute, it is beyond the power of the courts to remedy the evil. When the practice is placed under the control of the courts, they must take the responsibility of seeing that the issues between the parties are brought to a speedy hearing and that the time of the courts is not consumed in controversies over mere matters of procedure. The enforcement of a rule requiring all preliminary relief to be obtained at one time will result in the settlement of many matters by the attorneys themselves which are now the subject of numerous motions and appeals.

The rule of one trial so far as practicable has been incorporated in the new practice.[15] One of the evils of the present system is the number of retrials that occur. So far as possible the new practice encourages one trial of the facts in order to obviate a reversal upon any question except the law. This is accomplished by encouraging a resort to special verdicts so far as possible, reserving questions of law to be applied to the facts as found and by discouraging reversals where the substantial rights of the parties are not affected by alleged errors on appeal. The right to a jury trial guaranteed by the constitution has been recognized, but provision has been made for a waiver of such a trial and by requiring a demand therefor to be made.[16] In respect to jury trials this state has not only preserved that right as it existed at the time of the adoption of the first constitution, but has incorporated in subsequent constitutions the right given by

[15]"Full power shall exist to make rules of practice for expediting the selection of the jury and the rules of practice shall provide for the fullest opportunity at the trial for getting at the real facts at issue; and the facts shall be determined so far as practicable upon one trial." (Civil Practice Act, § 33).

"A cause shall be submitted to the jury in such a manner that another trial of the same facts may be obviated so far as practicable." (id., § 38).

"With a view to determining finally upon one trial so far as practicable the facts in a case and to avoid retrials of questions of fact so far as practicable, special verdicts subject to rules shall be resorted to wherever the case warrants such a course." (id., § 40).

[16]"The right to a jury trial as provided in the constitution is hereby recognized but such right shall be exercised by a written demand therefor made within ten days after the cause is at issue (or in a case where a summons to appear will issue, on the return day thereof); and if not so made such right shall be deemed to have been waived; but a jury trial may be had, by order, of any issue of fact, notwithstanding such waiver, or a jury trial may be dispensed with by order, in a case where the right to dispense with a jury trial now exists." (Civil Practice Act, § 34).

statute to a jury trial where it did not formerly exist. The modern tendency is to eliminate jury trials, particularly in commercial cases which will not survive delay. We cannot restrict this right by statute, but we may avoid unnecessary delay in some cases by requiring the parties to make a seasonable demand as a preliminary to the right to a trial by jury. The practice act of Toronto furnishes a striking example of the most advanced position with respect to jury trials, where it is provided substantially that except in a few cases no jury trial shall be had except by direction of the court.[17] The provision requiring a demand to be made as a preliminary to a right to trial by jury is merely incorporating into the practice in the upper courts what is now the usual procedure in local courts in cases involving small amounts, where expedition is the very essence of the controversy.

One course of appeal is the rule under the new practice.[18] No reasonable procedure could be devised which would obviate entirely reversals and re-trials, but rules can be formulated which will reduce the number of new trials. The inexperience, ignorance and indifference of the bench and bar where it exists cannot be corrected by rules, but pitfalls and obstacles can be removed which will make it easier to avoid error. One course of appeal is all that should be

[17]See Judicature Act of Ontario, May 7, 1913, chapter 19, 3-4 George V. §§ 53-61.

[18]"The rules of practice shall contain such provisions as may be practicable, without impairing the right of a trial by jury, directing appellate courts to disregard on appeal, mistakes, irregularities and defects not affecting substantial rights, and generally to determine the issues according to the right and substance of the case." (Civil Practice Act, § 47).

"The review of an intermediate decision in the nature of an interlocutory judgment except by the consent of the court or judge granting the same, shall be limited to appeal from the final judgment." (id., § 48).

"The appeal from a judgment shall present all the questions of fact and law in the case which the court has jurisdiction to review without regard to whether or not an appeal has been taken from the decision upon the motion for a new trial." (id., § 49).

"The trial judge is authorized upon a motion for a new trial to direct such a judgment, notwithstanding the verdict, as should have been entered in the action at the time of the trial." (id., § 50).

"No judgment shall be reversed or new trial granted on the ground of misdirection, improper admission or exclusion of evidence, or error as to a matter of pleading or procedure unless after examination of the whole case it shall appear that a substantial right of a party was injuriously affected." (id., § 51).

"There shall be a retrial not of the whole case in every instance but only of the questions with respect to which an error was committed, if separable. When a new trial is ordered because the damages are excessive or inadequate, and for no other reason, the verdict shall be set aside only in respect of damages and shall stand good in all other respects." (id., § 52).

"In all cases where it can be done constitutionally the appellate courts may receive further evidence, allow amendments of pleadings or process and adopt any procedure not inconsistent with this act which it may deem necessary or expedient for a full and final hearing and determination of the cause." (id., § 53).

necessary in most cases. In the English jurisdiction new trials are almost unknown and our procedure and theirs have a common origin. By providing for one motion for all preliminary relief before trial and one appeal except by leave from the order granting or refusing such relief, the number of appeals in this branch of procedure will be very much reduced. Interlocutory judgments have been abolished and with them go appeals from such judgments. Their review is involved in the appeal from the judgment. There exists in the present practice a provision for disregarding immaterial errors, but the new practice emphasizes this matter and requires all mistakes, defects and irregularities to be disregarded unless they affect a substantial right of a party.

There is but one judgment in the new procedure.[19] All intermediate relief is granted by order. So far as these orders are not reviewable directly by appeal they are brought up on appeal from the judgment. As the provisions for joinder of parties and joinder of causes of action have been liberalized, so the court has been granted broader powers with respect to the entry of judgment. Relief may be granted for or against any party whether plaintiff or defendant, as the facts may require. Summary judgment is provided for in commercial and other cases and provision is made for a motion for judgment where the defense is sham, frivolous or otherwise unfounded.

It was, however, not sufficient that the control of procedure should be placed in the courts and that procedure should be made uniform. Even such a procedure might be complex. The rules may be ambiguous. It is not only necessary that they should be uniform but that they should be simple in their language and easily understood. A body of simple forms for pleadings and other papers is therefore

[19]"The rules of practice shall provide for the prompt disposition of any frivolous or sham defence, and for granting summary relief and for rendering judgment in favor of a party as against any other party at any stage of the action, which will, so far as practicable, dispose of the controversy between the parties." (Civil Practice Act, § 41).

"Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and the ultimate rights of the parties on each side as between themselves may be determined; and when a cause of action is sustained in favor of or against only a part of the parties thereto, judgment may be rendered in favor of or against such parties respectively at any stage of the proceedings." (id., § 42).

"Judgment may be taken as to any part of a claim, and the action may proceed as to the remainder, where a part of the answer or reply is struck out or the answer or reply admits a part of a claim, leaving such part uncontested or in any other case where such a course is in the interest of justice." (id., § 43).

"Wherever an answer is served in an action brought to recover a debt or liquidated demand arising upon a contract express or implied, sealed or unsealed, or upon a judgment for a stated sum, or, upon a statute, the practice shall provide that the answer may be struck out and that judgment may be entered upon motion and affidavit, as may be provided by rules of practice." (id., § 44).

contemplated.[20] These have not been drawn but they will form a part of the new practice. They will not control the practitioner but will merely serve as a guide and as models for him to follow. While the rules of pleading have been modified by statute, the forms still retain much of the formality and ambiguity of pleadings under the common law. A logical arrangement of the rules also will conduce to simplicity. The rules should be arranged according to the progress of an action from its commencement to its close, with a division comprising general rules applicable to one or more stages of an action.[21] It is not enough to combine the procedure relating to a given remedy, as for instance that relating to provisional remedies, within a single rule, but the rule must be drawn in language which can be easily understood. The principle of simplicity, therefore, is one that has been followed by the board throughout its work. This is manifest in the arrangement of the new consolidated laws made up of substantive provisions taken from the code of civil procedure. The alphabetical arrangement has been adopted merely as a matter of simplicity and convenience. This arrangement obviates the necessity of first determining under what head a given subject has been classified. This cyclopaedic method is generally recognized as most convenient where it can be applied and is the one now commonly followed in extensive law treatises.

The plan of the board involves a disposition of the entire code of civil procedure. If the new practice is adopted, the code will be repealed and in its place there will be a short practice act of about seventy sections, a body of rules consisting of about four hundred rules, an Evidence Law, a Costs, Fees, Disbursements and Interest Laws and a Civil Right Law. Other substantive matter in the code not contained in these three laws has been assigned to appropriate existing consolidated laws where it can be found quite as readily as other matters of similar character. The practice in the surrogate's court and in the courts of justices of the peace, being special practice, has not been changed, but each has been made a separate statute. Under the new practice, when a practitioner has determined his cause of action or his right to a specific relief, the procedure for the enforcement of that right or relief will be controlled by the civil practice rules

[20] "There shall be prepared, as part of the rules, short forms for pleadings and other papers generally used in court proceedings but no technical objection shall be raised to any paper on the ground of any alleged want of form." (Civil Practice Act, § 25).

[21] "The civil practice rules shall be arranged according to a logical classification following the steps in the progress of an action and so that the provisions upon the same subject, so far as practicable, shall be found together." (Civil Practice Act, § 17).

and he will find in these rules a simple, uniform and flexible system of procedure for arriving at a determination of the merits of his controversy.

The result of the new practice will be a shifting of the responsibility for the administration of justice from the legislature to the courts. The judiciary will not be able to escape the responsibility for maladministration of justice by charging it to fixed statutory rules and will not be able to hide their defects behind technical constructions of statutes. The rights of the parties will be brought to the foreground and controversies over subordinate procedure will be relegated to the background. It will stimulate the bench to a higher degree of efficiency and will discourage the bar from interposing technical objections which do not go to the substantial rights of the parties. It will save the time of the appellate courts now consumed in reviewing questions of procedure and will conserve judicial time and energy. The general result will be greater expedition, greater certainty and less expense in the administration of justice, but this result will depend to a large degree upon the character, qualifications and spirit of the bench and bar and the attitude manifested toward the new practice. In the last analysis it is a question of men after all. The best procedure must fail if not properly administered.

The Board of Statutory Consolidation has done its part. It has justified its existence. It has consolidated the general statutes of the state and has prepared a statutory record of all the statutes of the state, general, special, private and local. Six years ago it prepared a re-classification of the material in the code of civil procedure. During the past two years it has devoted its attention exclusively to the reform of the civil practice. It presented a plan of this reform to the legislature and in pursuance of that plan it now presents its report. The board invites serious attention to this report and welcomes honest criticism designed to perfect its work.

It was not an easy task. It was not easy to distribute the substantive matter in the code to appropriate consolidated laws. The distribution required time and reflection and was not entirely satisfactory when completed. The preparation of the new consolidated laws was not done in a day. Above all, the examination of the procedure in other jurisdictions and the suggestions made by those who have written upon the subject of the reform of procedure required serious consideration. The preparation of the practice act and rules was not a slight task. Having done its part the board now appeals to the members of the bench and bar to do their part.

A great opportunity is presented. The reform of procedure is a call to duty. It must be done by those learned in the law. This is not an academic question to be used as a perennial topic of discussion at bar association meetings. It is a vital, practical public question that should receive the serious attention of every member of the bar. It is second in importance to none so far as the security of life and property and the protection of private and public rights are concerned; and is on a par with the church itself as a living force in the community for peace and order and good government. The profession has the skill and training. It has the confidence of the public. It is not the work of this board alone but of legislature and the rank and file of the profession. Though the people may recognize the necessity for the reform, they are unable to accomplish it as it should be done. If it is not worked out by those who are able to do it, it will be brought about by the people through their own crude methods. Already there is a resort to committees and boards of arbitration for the settlement of disputes. The recall of judges and of their decisions is a protest against the administration of justice and an effort to accomplish a reform by tearing down rather than by building up and supporting our system of government.

It is impossible to predict the results of a failure to improve the administration of justice. This function of government is the very life-blood of the political body. It equalizes rights and distributes justice. Clog up this current and you paralyze the body politic. It has been compared to the arteries of the human body, the hardening of which produces sure death. A failure to properly administer justice first results in dissatisfaction and discontent, then in disrespect and contempt, then in a resort to committees and boards of arbitration in the search for justice without law and finally perhaps in anarchy with its accompanying freedom from all law. In the light of recent events abroad this is not an extreme view. How fragile are ancient and established institutions and governments and how slender is the cord of civilization under the stress of powerful human emotions and resentment for real or fancied private or public wrongs! Before it is too let let us reaffirm and exemplify by a suitable reform of our procedure the principle wrung from King John on the plains of Runnymede:

"To none will we deny, to none will we delay right or justice."