THE CODE OF PROCEDURE OF THE STATE OF NEW-YORK; AS AMENDED BY THE LEGISLATURE, BY AN ACT PASSED JULY 10, 1851: WITH NOTES OF DECISIONS, AND REFERENCES TO THE RULES AND FORMES OF PRACTICE

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The Code of Procedure of the State of New-York; As Amended by the Legislature, by an Act Passed July 10, 1851: With Notes of Decisions, and References to the Rules and Formes of Practice by H. S. McCall

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PASSED JULY 10, 1851:

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NOTES OF DECISIONS,

AND REFERENCES TO THE

RULES AND FORMS OF PRACTICE,

With a Copious Index;

BY

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1851.

NOTICE.

By section two, of chapter four hundred and seventy-nine, passed July ten, one thousand eight hundred and fifty-one, the Legislature provided that section thirteen of the Code, as amended, should not take effect until the first day of January next, and that the Code, as amended by that act, should be published in the Session Laws, and the amended sections in italics; and as several important amendments have been passed it has been thought best to publish the amended sections in the present edition in italics. The marginal notes also show what sections were amended in 1849, and what additional sections were passed that year. The number of the sections inclosed in brackets corresponds with the numbering of the sections in the Code of 1848, and will be found of great value in consulting the decisions of cases under the original Code.

The notes will be found to contain abstracts from, and references to all the most important cases that have been decided on pleading and practice since the Code went into operation, with occasional reference to corresponding decisions under the former practice, and the accompanying index is more full and complete than any other heretofore published.

In the arrangement of the notes an effort has been made so to bring the different subjects together, that all the decisions relating to one topic could be readily found; and to expedite the labors of the practitioner numerous references will be found from one section to another, thus referring not only to different portions of the Code relating to the same subject, but also referring to other subjects collateral thereto; and if, by use of the references, notes and index here made, the profession shall find their labor in any manner lightened of its burden, the author will have the assurance that his labor has not been in vain.

Albany, July 30, 1851.

CODE OF PROCEDURE.

AN ACT

To amend the act entitled "An act to Simplify and Abridge the Practice, Pleadings, and Proceedings of the Courts of this State," passed April 12, 1848.

Passed April 11, 1849.

The act entitled "An act to simplify and abridge the practice, pleadings, and proceedings of the courts of this State," passed April 12, 1848, is hereby amended so as to read as follows:

AN ACT

To Simplify and Abridge the Practice, Pleadings, and proceedings of the Courts of this State.

WHEREAS, it is expedient, that the present forms of actions and pleadings in cases at common law should be abolished, that the distinction between legal and equitable remedies should no longer continue, and that an uniform course of proceeding, in all cases, should be established: Therefore,

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

GENERAL DEFINITIONS AND DIVISIONS.

Division of remedies.

SECTION 1. Remedies in the courts of justice are divide into,

1. Actions;

2. Special proceedings.

Definition of an action.

§ 2. An action is an ordinary proceeding in a court justice, by which a party prosecutes another party for th enforcement or protection of a right, the redress or pr vention of a wrong, or the punishment of a public offene

Amended 1849.

Definition of a special proceeding

§ 3. Every other remedy is a special proceeding.

Division of actions into civil and criminal.

§ 4. Actions are of two kinds:

1. Civil;

2. Criminal.

Definition of a criminal action.

Amended 1849.

§ 5. A criminal action is prosecuted by the people the state, as a party, against a person charged with a pul lic offence, for the punishment thereof.

Definition of a civil action.

§ 6. Every other is a civil action.

Civil and criminal remedies not merged in each other.

§ 7. Where the violation of a right admits of both civil and criminal remedy, the right to prosecute the o is not merged in the other.

Subjects embraced in this act.

§ 8. This act is divided into two parts:

The first relates to the courts of justice, and their juri diction;

The second relates to civil actions commenced in t courts of this state, after the first day of July, 1848, exce when otherwise provided therein, and is distributed in fifteen titles. The first four relate to actions in all t courts of the state, and the others, to actions in the s preme court, in the county courts, in the superior court the city of New-York, in the court of common pleas i the city and county of New-York, in the mayors' courts cities, and in the recorders' courts of cities, and to appe to the court of appeals, to the supreme court, to the coun courts, and to the superior court of the city of New-Yo

Amended 1849.

PART I.

OF THE COURTS OF JUSTICE, AND THEIR JURISDICTION.

TITLE I.

Of the Courts, in General.

§ 9. The following are the courts of justice of this state: The several courts of this State.

1. The court for the trial of impeachments.
2. The court of appeals.
3. The supreme court. Amended 1849.
4. The circuit courts.
5. The courts of oyer and terminer.
6. The county courts.
7. The courts of sessions.
8. The courts of special sessions.
9. The surrogates' courts.
10. The courts of justices of the peace.
11. The superior court of the city of New-York.
12. The court of common pleas for the city and county of New-York.
13. The mayors' courts of cities.
14. The recorders' courts of cities.
15. The marine court of the city of New-York.
16. The justices' courts in the city of New-York.
17. The justices' courts of cities.
18. The police courts.