

**IMPORTANT FEATURES OF
PLEADING AND PRACTICE,
UNDER THE NEW YORK
CIVIL PRACTICE ACT**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649611560

Important Features of Pleading and Practice, Under the New York Civil Practice Act by
Harold R. Medina

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

HAROLD R. MEDINA

**IMPORTANT FEATURES OF
PLEADING AND PRACTICE,
UNDER THE NEW YORK
CIVIL PRACTICE ACT**

IMPORTANT FEATURES

Ct

OF

Pleading and Practice

UNDER THE

New York Civil Practice Act

BY

HAROLD R. ^{revised} MEDINA, A.B., LL.B.

OF THE NEW YORK BAR

INSTRUCTOR IN NEW YORK PLEADING AND PRACTICE

AT THE

COLUMBIA UNIVERSITY LAW SCHOOL

NEW YORK

BAKER, VOORHIS & CO.

1922

US
9911
MED

PREFACE.

This series of ten lectures was originally delivered in New York City in October 1921, immediately after the Civil Practice Act went into effect; the course was repeated in New York in November 1921, and again at White Plains, in April 1922. Portions of it were also delivered in the form of single evening addresses to groups of practicing lawyers at New Rochelle, Tarrytown and other places. They were finally given, substantially in the form as here printed, in New York City in May 1922. Because of the many requests from all parts of the State of New York for the subject matter in printed form the present volume has been published.

It is the purpose of the lectures to set forth briefly the changes in the New York law of pleading and practice accomplished by the Civil Practice Act and the Rules of Civil Practice which took effect on October 1st, 1921, and to discuss in some detail the effect of such new provisions as may be regarded as substantial or fundamental.

No attempt has been made to refer specifically to every change to be found in the new law, as it contains an infinite number of slight modifications of the language formerly used in the Code of Civil Procedure, many of which have been inserted merely for the purpose of clarification, and the enumeration of these slight changes would serve no useful purpose and would prove very tedious and uninteresting reading. It is believed, however, that all of the really important modifications in the law have been discussed.

As is already well understood, a number of changes

in the arrangement of the material formerly included in the Code of Civil Procedure consisted in removing certain of this material to the various Chapters of the Consolidated Laws, and in creating certain new and separate Acts, such as the Surrogate's Court Act, the New York City Court Act, the Justices' Court Act and so on. As these former sections of the Code of Civil Procedure may easily be located by reference to the table now published with the new Civil Practice Act, no enumeration of such changes has been made in any of these lectures.

A perhaps not surprising but at least significant fact is that since October 1st, 1921, there have been over 650 decisions relating to sections of the Civil Practice Act and the Rules of Civil Practice appearing in the New York Law Journal alone. All of these decisions, and also a considerable number from other parts of the state, have been carefully considered in connection with these lectures. It is a great pleasure to note that, with a very few exceptions, the distinct tendency of the courts in all parts of the state has been to interpret the provisions of the new law in a broad and liberal spirit.

No doubt some errors will be found herein. It is hoped they may be few and that they may not be judged too harshly.

Many thanks are due to the practicing attorneys and clerks of courts who, while attending the lectures as originally given, made a large number of helpful inquiries and suggestions, a considerable number of which are included in the material in its present final form.

HAROLD R. MEDINA.

NEW YORK CITY, June 5th, 1922.

TABLE OF CONTENTS.

LECTURE	PAGE
I	Historical Outline. 1
	Organization of Courts. 11
	Summons and Service Thereof. 13
II	Mistakes, Defects and Irregularities. 35
	Complaint. 42
	Joinder of Parties. 43
III	Answer. 59
	Verification. 65
	Motions with Reference to Pleadings. 67
	Motions in Lieu of Demurrers. 71
IV	Motion for Judgment under Rule 107. 77
	Motions for Summary Judgments under Rules 113, 114. 79
	Motion for Judgment under Section 476. 93
	Motions Generally. 94
	Consolidation and Severance. 96
V	Depositions. 100
	Depositions—Motions to Vacate or Modify Notice. 114
	Depositions—Examination Pursuant to Order. 120
	Deposition Pursuant to Stipulation. 125
	Depositions—Conduct of Examination. 126
VI	Depositions taken without the State. 128
	Use of Depositions at Trial. 131
	Incidental Practice. 133
	Tender. 136
	Extensions of Time. 137
	Amendments of Course. 139
	Bonds and Undertakings. 141
	Sale of Perishable Property. 142
	Enforcement of Foreign Decree of Divorce or Separation. 144
	Service of Interlocutory Papers. 144
	Court and Judges' Orders. 147
	Revival Proceedings. 149
VII	Compulsory Admissions. 151
	Discovery and Inspection. 155
	Cancellation of Lis Pendens. 158
	Appellate Practice. 158
VIII	State Writs Abolished. 164
	Provisional Remedies. 167

LECTURE	PAGE
IX Trial Practice.	185
Application of Provisions of Civil Practice Act and Rules of Civil Practice to Municipal Court of New York City and City Court of New York City.....	198
X Declaratory Judgments.	207
The Declaratory Judgment in England.....	216
No Declaration Where Special Tribunal Can Handle Situa- tion.	223
Value as an Alternative Remedy.....	224
The Negative Declaration.	227
Necessity of Some Claim Against Plaintiff Who is Seeking Declaration.	240
Crown may be Defendant in Action for Declaration.....	243
Uses of Declaratory Judgments.....	244
Table of Cases Cited.	vii
Index.	247

TABLE OF CASES CITED.

	PAGE
Adelmann v. Lamb, N. Y. L. J., Apr. 6, 1922.....	57
American Discount Corp'n v. Moore, N. Y. L. J., Nov. 4, 1921.....	16
American Woodpulp Corporation v. Miami Paper Co., N. Y. L. J., Apr. 6, 1922.....	89
Anway v. Grand Rapids Ry., 179 N. W. 350.....	212, 213
Appelbaum v. Gross, 117 Misc. 140.....	89
Auditore v. Cantanzaro, 117 Misc. 253.....	38
Austen v. Collins, (1886) 54 L. T. R. 903.....	218
Barraclough v. Brown, (1897) A. C. 615.....	224, 229, 230
Bassel v. Selis, N. Y. L. J., Jan. 17, 1922.....	110, 112
Bauer v. Dewey, 166 N. Y. 402.....	53
Belok v. Ninth Avenue Ry. Co., N. Y. L. J., Dec. 13, 1921.....	56
Benediktsson v. Weston Dodson & Co. Inc., N. Y. L. J., Jan. 24, 1922.....	95
Blackwell v. Columbia Trust Co., 192 N. Y. Supp. 226.....	59, 69
Bristol Manufacturing Co. v. Zahn, N. Y. L. J., Apr. 11, 1922....	52
Brody v. Madison Lunch, Inc., N. Y. L. J., Dec. 16, 1921.....	97
Brooking v. Mandsley Son & Field, (1898) 38 Ch. D. 636.....	228
Brooklyn Clothing Corp'n v. People's Nat. Fire Ins. Co., N. Y. L. J., May 22, 1922.....	92
Brooks v. Brooks, 190 App. Div. 564.....	30
Brown Paint Co. v. Reinhardt, 210 N. Y. 162.....	193
Buehler v. Bush, 200 App. Div. 206.....	9
Buell v. Van Camp, 119 N. Y. 160.....	169
Bull v. Attorney-General for New South Wales, (1915) A. C. 564.....	224
Burghes v. Attorney-General, (1911) 2 Ch. 139, affd. (1912) 1 Ch. 173.....	220, 224, 234, 235, 240, 243
Campbell v. Banland Co., 41 App. Div. 474.....	108
Chapman v. Michaelson, (A. C.) (1909) 1 Ch. 238.....	234
Chelsea Exchange Bank v. Munoz, 118 Misc. 159.....	90
Chersonsky v. Schedin, N. Y. L. J., Jan. 19, 1922.....	19
Clare v. Lockard, 122 N. Y. 263.....	33
Clay v. Booth, (A. C.) (1919) 1 Ch. 66.....	221, 240, 241, 243
Coghlan v. Jenkins, N. Y. L. J., May 6, 1922.....	10
Cohen v. Richman, N. Y. L. J., Jan. 25, 1922.....	89
Cohen, Goldman & Co. Inc. v. Ellmann, N. Y. L. J., Apr. 29, 1922.....	89

	PAGE
Commercial Union of America, Inc. v. Ipranossian, N. Y. L. J., Jan. 10, 1922.	38
Crowe v. Marsh Garage Co., Inc., 117 Misc. 660.	205
Curtis v. Sheffield, (1882) 51 L. J. Ch. 535, 21 Ch. D. 1.	216
Cutler v. Allavena, 165 App. Div. 422.	174
Dahlstrom v. Gemunder, 198 N. Y. 449.	68
DePuy v. Strong, 37 N. Y. 372.	76
Dodde v. Lamar, N. Y. L. J., Feb. 24, 1922.	89
Dwan v. Massarene, 199 App. Div. 872.	81, 82, 83, 84
Dyson v. Attorney-General, (1911) 1 K. B. 410. .220, 224, 235, 240, 243	243
Eisenberg v. Eisenberg, N. Y. L. J., May 19, 1922.	144
Engelhardt Co. v. Benjamin, 2 App. Div. 91.	178
Evans v. Manchester, Sheffield & Lincolnshire R. R. Co., (1887) 36 Ch. D. 626.	226
Faber v. Gosworth Urban District Council, (1903), 88 L. T. E. 549. . 218	218
Feizi v. Second Russian Insurance Co., 199 App. Div. 775.	38, 197
Fisher v. Chas. H. Van Aken Co., Inc., N. Y. L. J., May 3, 1922. . 13	13
Fosmire v. National Surety Co., 229 N. Y. 564.	70
Fromm v. Grisman & Palm Knitting Co., N. Y. L. J., May 24, 1922.	118
Gabriel v. Great Atlantic & Pacific Tea Co., N. Y. L. J., May 25, 1922.	108
General Investment Co. v. Interboro Rapid Transit Co., N. Y. L. J., May 6, 1922.	86
Gibbon v. Freel, 93 N. Y. 93.	15
Guaranty Trust Co. v. Hannay & Co., (1915) 2 K. B. 536. .221, 222, 227 229, 234, 236, 237, 240, 241	227
Hanna v. Mitchell, N. Y. L. J., Mar. 3, 1922.	86
Hanrahan v. Terminal Station Commission, 206 N. Y. 494.	211
Hays v. National Surety Co., N. Y. L. J., May 23, 1922.	86
Halme v. Buckelew, 229 N. Y. 363, 372.	213
High Rock Knitting Co. v. Bronner, 18 Misc. 627.	66
Hoormann v. Climax Cycle Co., 9 App. Div. 579.	168
Hopkinson v. Mortimer, Harley & Co. Limited, (1917) 1 Ch. 646. . 242	242
Horter v. DeMesa, 196 App. Div. 462.	136
Hoxsie v. Berri, N. Y. L. J., Mar. 14, 1922.	88
International Time Recording Co. of N. Y. v. Waverly Machine & Tool Co., N. Y. L. J., May 9, 1922.	60