

**THE NEW JERSEY PRACTICE ACT
(1912) AND RULES,
ANNOTATED, WITH NEW FORMS
ADAPTED TO THIS PROCEDURE**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649221769

The New Jersey practice act (1912) and rules, annotated, with new forms adapted to this procedure by Charles H. Hartshorne

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CHARLES H. HARTSHORNE

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ADAPTED TO THIS PROCEDURE

BY
CHARLES H. HARTSHORNE
OF THE NEW JERSEY BAR.

NEWARK, N. J.
SONEY & SAGE

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1912

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By CHARLES H. HARTSHORNE

PREFACE.

It is not intended to offer here a general treatise upon practice or pleading, but only such explanatory notes as may aid the practitioner in adapting the new methods to the old: for it should not be forgotten that the new system, radical as are the changes made by it, has still the common law procedure for its basis. Neither is it intended to offer a complete set of forms, but enough only to illustrate adequately the new methods of pleading and the more simple and flexible forms of judgment that will be used in the new practice.

Most of the forms of pleadings are taken from the Connecticut Practice Book, but these are more or less modified; a few are from Bullen & Leake's English Forms under the Common Law Procedure Acts, modified to conform to our new rules of pleading; and many are entirely new.

The annotations to the Act and Rules cannot usefully be made very full till a considerable number of judicial interpretations of those regulations shall have been made. A few English and Connecticut cases are referred to in the notes, but not many of the provisions of the rules in those jurisdictions are identical in language with our own, and most of their judicial decisions interpreting them will be found to be inapplicable here.

The English Judicature Acts and Rules, with copious annotations, may be found in *The Annual Practice*, by Snow, Burney & Stringer, or in *The Yearly Supreme Court Practice*, by Mackenzie & Chitty. Both are published yearly in London. The latter is in the state law library at Trenton. An excellent treatise on the new English procedure is Odgers' *Pleading and Practice* (London, 1903).

The Connecticut Practice Act, without the rules, is in the volume of pamphlet laws of that state for 1879 at page 432. The rules may be found in 58 Conn. 561. The act and the rules, with some annotations, were first published together in *Beer's Connecticut Practice*. This is now out of print. The only other publication of them is *The Connecticut Practice*

Book (1908), but in that book the sections of the act of 1879 are interspersed among other provisions relating to procedure. There is, however, a table in the book by which the sections of the Practice Act may be found under their old numbers. The references to the Connecticut Act, made in this volume, are to the original section numbers; the references to the Connecticut rules are to the numbers in *The Practice Book* (1908).

The New Jersey Practice Act (1912) and Rules were prepared by a committee of the State Bar Association appointed by its president, William M. Johnson, under a resolution of the Association adopted at its annual meeting in June, 1911 (*Year Book* (1911-12), p. 28).

The committee consisted of Charles H. Hartsborne (chairman); Supreme Court justices, Francis J. Swayze and James J. Bergen; vice-chancellors, Edwin R. Walker (since appointed chancellor) and James E. Howell; ex-justices of the Supreme Court, Bennet Van Syckel, John Franklin Fort and Gilbert Collins; ex-judges of the Common Pleas, Alfred F. Skinner and Joseph H. Gaskill, and also Senator George S. Silzer and Messrs. William M. Clevenger and Frank H. Sommer. The drafts of the Practice Act, Rules, and other measures reported by the committee were made by a sub-committee consisting of the chairman and Messrs. Skinner and Clevenger, who were assisted at several of their meetings by ex-justice Van Syckel. The drafts prepared by the sub-committee were changed in minor details only by the full committee.

The committee reported four bills to the Association at a special meeting held in January, 1912, namely—

1. The Practice Act (1912) with Rules and Forms;
2. The Transfer of Causes Act;
3. An Act providing that law courts may determine equitable questions incidentally involved in law cases, and that the Court of Chancery may determine legal questions incidentally involved in equity cases;
4. A Married Women's Act.

All these bills were approved by the Association, except the third, which was disapproved, partly because it was doubted whether the constitution permitted the legislature to confer the jurisdiction proposed by that bill, but more, I think, because of the traditional prejudice of the lawyers of this state against enlarging the equity powers now exercised by our law courts. It is not to the credit of our bar that the satisfac-

tory experience of the English courts in administering law and equity by separate tribunals having a common jurisdiction, is either unknown to, or ignored by, a majority of its members.

The Practice Act and Rules were adopted by the legislature with a few unimportant amendments suggested by the committee. The only change made without the committee's approval was the omission of a provision that a jury trial be deemed to be waived unless expressly demanded.

The Transfer of Causes Act passed in the form reported by the committee, with one or two immaterial, verbal changes.

Only one section of the Married Women's Act, as prepared by the committee, became law; namely, that permitting a wife to sue or be sued in any case without joining her husband (*Infra*, p. 73). As reported by the committee, it contained two other sections, one providing that contracts between husband and wife should be enforceable in the law courts. This was struck out by the legislature. The other, providing that in an action at law, between husband and wife, any equitable defense might be pleaded. This was struck out by the Association.

C. H. H.

November, 1912.

LIST OF WORKS REFERRED TO IN THIS BOOK.

- Elements of Jurisprudence**, Thomas E. Holland (New York, 1896).
Courts and Procedure in England and New Jersey, Charles H. Hartshorne (Newark, N. J., 1905).
Code Remedies, John N. Pomeroy, Jr. (Boston, 1894).
Code Pleadings, Philemon Bliss (St. Paul, 1894).
Civil Procedure, Alexander Martin (Boston, 1899).
Pleading and Practice under the Judicature Acts, W. B. Odgers (London, 1903).
Stephen on Pleadings.
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The Annual Practice (London, 1907).
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The Connecticut Practice Act, with Rules and Forms, George E. Beers (Hartford, 1901).
The Connecticut Practice Book (Hartford, 1908).

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