

## Louisiana Law Review

---

Volume 2 | Number 2

January 1940

---

LOUISIANA PRACTICE, edited by Henry George McMahon. WestPublishing Co., St. Paul, 1939. 2 vols. Pp. xviii, 2146. \$20.00.

Hon. William H. Byrnes Jr.

Leon Sarpy

---

### Repository Citation

Hon. William H. Byrnes Jr. and Leon Sarpy, *LOUISIANA PRACTICE*, edited by Henry George McMahon. WestPublishing Co., St. Paul, 1939. 2 vols. Pp. xviii, 2146. \$20.00., 2 La. L. Rev. (1940)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol2/iss2/17>

This Book Review is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact [kreed25@lsu.edu](mailto:kreed25@lsu.edu).

## Reviews

LOUISIANA PRACTICE, edited by Henry George McMahon. West Publishing Co., St. Paul, 1939. 2 vols. Pp. xviii, 2146. \$20.00.

*McMahon's Louisiana Practice* is an exhaustive two volume work in which the author's ability, untiring industry and thoroughness have produced the only compilation of all authorities dealing with Louisiana pleading and practice.

Since its adoption in 1825, the Code of Practice has been considered the bible of the adjective law of Louisiana, perhaps not without justification. The influx from time to time of new rules of pleading and practice, however, have gradually outmoded such a belief. Provisions of the Constitution of Louisiana, legislative acts, and rules and decisions of the courts have at times amplified and often nullified many articles of the Code of Practice. Its instability has caused attorneys and students an ever present fear of uncertainty in their quest for controlling precepts in a truly chaotic procedural situation. Specific examples of this fact are manifested in connection with the following: jurisdiction *ratione materiae* of the courts as regulated by Article VII of the Louisiana Constitution of 1921; process and articulation of pleadings as controlled respectively by the statutes on service of process,<sup>1</sup> and pleading and practice;<sup>2</sup> and questions of proof and special defenses in contract matters provided by the Civil Code.<sup>3</sup> Further, there are some portions of the adjective law of Louisiana which do not find their origin in any constitutional, codal or legislative provisions, but are mere creatures of jurisprudence, such as questions of misjoinder and nonjoinder of parties.<sup>4</sup>

The result was that one not intimately familiar with all of these various sources was often constrained to the intensive and unwieldy task of exhausting all authorities before his search could be satisfactorily and confidently terminated. The heavy loss of time and waste motion were apparent; the dire need of a properly organized work presenting all the authorities in workable style became conspicuous. Preceding works on Louisiana

---

1. La. Act 179 of 1918, as amended by La. Act 48 of 1932, § 1 [Dart's Stats. (1939) §§ 1933-1937].

2. La. Act 157 of 1912, § 1, as amended by La. Acts 300 of 1914, § 1, 228 of 1924, § 1, and 27 of 1926, § 1 [Dart's Stats. (1939) § 1483].

3. Art. 2130, La. Civil Code of 1870.

4. *Gill v. City of Lake Charles*, 119 La. 17, 43 So. 897 (1907).

pleading and practice, though laudable to their limits, all fall far short of overcoming the stated difficulty. Wortham's *Civil Procedure in Louisiana*, published in 1816, is scholarly, but embraces only the first 207 articles of the Code of Practice—in the first volume of a projected work which the author failed to complete before his death. *Cross on Pleading* and *Cross on Practice*, published in 1885 and 1912 respectively, are now definitely obsolete in many respects.

Professor McMahan's work is truly the long needed coordinating agent. After an elaborate introductory chapter on the genesis of the Code of Practice and on preliminary explanations, the author has by a functional means of approach, judiciously compiled all pertinent materials related to pleading and practice which are contained in the Constitution, Civil Code, Code of Practice, statutes, rules of court and jurisprudence, according to the chronological stages of a law suit. These are appropriately supplemented with references to many renowned authorities on adjective law such as professors Millar of Northwestern University and Sunderland of the University of Michigan, and to civil law commentators including Febrero, Pothier, Baudry-Lacantinerie, Planiol, and Domat. References are also made to Acts of Congress, French and Spanish Codes of Civil Procedure, various law review articles and text writers. Matters of jurisdiction, pleadings by all litigants, trial in the courts of first instance, appellate procedure and enforcement of judgments, are treated in the order named. Then follow the conservatory and extraordinary writs, real actions, executory process and succession procedure, all of which fall away from the beaten path of the ordinary law suit. The author has frequently interspersed commendable observations and conclusions of his own. The work is not held out as a text book in the popular sense of the term, being essentially an arrangement of pleading and practice precepts in their practical order. All articles of the Code of Practice are reproduced but not in numerical sequence, their provisions having been selected to fit the logical design of the project. Articles not carried in the body proper are found in the appendix.

The elaborate Chapter III dedicated to "The Petition" will probably be the section most frequently consulted. Matters regarding the form and contents of pleadings, and parties plaintiff and defendant, are principally treated in coherent style and sequence. The widely separated authorities have been harnessed so as to permit a concise narrative statement of the law and this is adequately annotated.

The field of exceptions has always been a source of constant anxiety to both bench and bar. As the author well points out at page 267, there are only eleven articles in the Code of Practice dealing with the subject, and these merely divide the field into various analytical categories, namely, declinatory, dilatory and peremptory exceptions. This ignores their functional classification and conventional nomenclature such as, for example, exceptions to the jurisdiction, of vagueness, and of no cause of action. The author treats the subject according to divisions of the Code, and further particularizes the exceptions under popular or customary titles. He has modestly restricted the quotations from his scholarly article on *The Exception of No Cause of Action*,<sup>5</sup> which could have appropriately been reproduced in full. A comparison of this article with the decision of the Supreme Court of Louisiana in *Reeves v. Globe Indemnity Co.*<sup>6</sup> will reveal that the court adopted its suggestion and wording in expressly overruling *West Orleans Beach Corporation v. Martinez*.<sup>7</sup>

A distinctive feature is the first instance of annotated forms of Louisiana pleading, which, being appropriately placed in the various chapters, are certain to prove extremely valuable to the Bench and Bar. Particularly is this so in the chapter on successions which not only contains model pleadings, but also inventories, accounts of executors and administrators, and all other documents which are usually filed in the course of a probate proceeding. It can safely be said that a workable knowledge of succession procedure could heretofore be learned only from the instruction of someone familiar therewith. No authority revealed the difference between an unconditional acceptance of a succession and an administration, much less when to follow one rather than the other. The matter is here exposed in a style conducive to ready reference, and affords the reader an adequate understanding of the various steps in those often uncontested proceedings. In the preface of the book the author admonishes against the blind use of forms, however, and explains that the ones presented are merely illustrative.

Ordinarily the number of articles in the Civil Code pertinent to pleading and practice might not appear so numerous. It is revealing, then, that the author has referred to over eight hundred articles of the Revised Civil Code of 1870. This bears out

---

5. McMahon, *The Exception of No Cause of Action* (1935) 9 Tulane L. Rev. 17-57.

6. 185 La. 42, 168 So. 488 (1936).

7. 180 La. 31, 156 So. 165 (1934).

the fact that the Civil Code does not embrace substantive law exclusively but contains many precepts of adjective law as well.

The final chapter is devoted to miscellaneous matters including summary process, workman's compensation, tutorship, interdiction, receivership, and partition proceedings. The work is brought to a conclusion with a table of contents (showing the pages and notes wherein are cited the various sections of the Constitution, Codes, Acts of Congress), a table of cases and an index.

One criticism is here in order. In the table of contents, when referring to the cited articles of the Civil Code of 1825 the publisher has apparently employed a reprint of 1838, having no doubt confused the original with a private and unofficial edition of 1838 by Upton and Jennings. This is also true where the original of the Code of Practice of 1825 is listed as that of 1839, indicating that either the Greiner or Upton edition (both published in 1839) was used.

It can safely be predicted that *McMahon's Louisiana Practice* will be warmly received by judges, practitioners, teachers and students, who will regard it for years to come as an outstanding contribution to the advancement of adjective law in Louisiana. The frequent demands made upon the present reviewers by members of the New Orleans Bar for permission to inspect the mimeographed pre-publication materials, and the constant requests made to State Bar Library since publication, are no uncertain indications of this fact. These mimeographed materials have successfully served as the adopted work for the classes in "Pleading and Practice" at Louisiana State University Law School and Loyola University School of Law during the scholastic year 1938-1939. A cursory résumé such as this cannot possibly afford a proper appreciation of the laborious undertaking represented nor of the multitudinous details treated, the knowledge of which can be acquired only by individual inspection. The production may well serve as an inspiration for similar projects in other states.

HON. WILLIAM H. BYRNES, JR.\*

LEON SARPY†

---

\* Judge of the Civil District Court for the Parish of Orleans, and Lecturer, Loyola University School of Law, New Orleans.

† Associate Professor of Law, Loyola University, New Orleans.