

Louisiana Law Review

Volume 4 | Number 3

March 1942

CODE OF PRACTICE OF THE STATE OF LOUISIANA, by Benjamin Wall Dart, assisted by the Publisher's Editorial Staff, Second Editorial Staff, Second Edition. The Bobbs-Merrill Company, 1942. Pp. xiv, 1697.

Ben R. Miller

Repository Citation

Ben R. Miller, *CODE OF PRACTICE OF THE STATE OF LOUISIANA*, by Benjamin Wall Dart, assisted by the Publisher's Editorial Staff, Second Editorial Staff, Second Edition. The Bobbs-Merrill Company, 1942. Pp. xiv, 1697., 4 La. L. Rev. (1942)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol4/iss3/13>

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.

fully to abandon any discussion of tax liens, leaving that field of research and endeavor to a later effort or to someone else. This is the disappointment in the work; the only matter of importance that seems to be omitted. It is only to be hoped that a second volume, handled in the same manner as this one, will shortly follow dealing with that most timely of subjects.

She has, however, discussed paving liens, which with the many more or less obscure privileges provided for in the Civil Code and special statutes and the newer and most interesting liens growing out of the drilling of oil, gas and water wells, occupy the latter half of the book. The first half is occupied with chattel mortgage, vendor's privilege, lessor's privilege and pledge, laborers' and materialmen's liens and the related liens such as the garageman's lien and others of similar nature.

All in all, the book is thorough and practical. It should be most valuable to any lawyer as a desk book for it should serve as law clerk, brief writer and research assistant whenever the question of liens, privileges and chattel mortgages arises in Louisiana.

CECIL MORGAN*

CODE OF PRACTICE OF THE STATE OF LOUISIANA, by Benjamin Wall Dart, assisted by the Publisher's Editorial Staff, Second Editorial Staff, Second Edition. The Bobbs-Merrill Company, 1942. Pp. xiv, 1697.

This new edition of the Code of Practice completes, with the exception of the Criminal Code and the much needed general index volume, the revised set of General Statutes, Codes and Constitution, which is of such great value to the bench and bar. This new volume, mechanically, repeats the interesting preface to the first edition, purports to bring the annotations up through the 3rd Southern Reporter 2nd, and has a table of contents and index which follow closely those of the first edition. The chief improvement over the former edition, however, is the correlation with the appropriate articles of the Code of Practice of thirty-four sections from Articles 7, 9, and 11 of the State Constitution, some eight hundred thirty articles of the Revised Civil Code, publisher's edition, and some nine hundred seventy-seven sections of the publisher's General Statutes. Numerous cross references and a digest

* Member of the Louisiana bar.

reference to the publisher's Louisiana Digest and to the Tulane and Louisiana Law Reviews are likewise given.

In contrast to the first edition there is included an appendix treating miscellaneous matters styled "Special Proceedings" embracing such procedural matter as adoption, charitable corporations, domestic relations—e.g., separation and divorce, election contests, emancipation by judicial action, expropriations, insanity commitments, public officials' defalcations and removal, and limited taxation procedure.

The rules of the Louisiana Supreme Court are reprinted in this volume; but the space necessitated therefor could have been used to far greater advantage, as these rules, and those of our other courts as well are easily accessible to the bar in separate pamphlet form.

The inclusion of the constitutional and of the many Civil Code articles and statutory provisions, together with the tables thereof, is a great timesaver to a busy lawyer, which we hope to be "after the duration." The value of such tables, however, would have been enhanced if the articles and statutory provisions merely given in cross reference, and not quoted in full, had been indicated and located in the tables.

Of doubtful value to the practitioner is the "Table of Sources referred to by the authors of the Code of Practice of 1825 and their comments"—already available in far greater detail and explanation in the *Projet of the Code of Practice of 1825*, published by the Louisiana Law Institute in Louisiana Archives, Volume 2.

In selecting which of the general statutes and articles of the Civil Code to incorporate in, and which to omit from, this new edition of the Code of Practice, the author and the publisher could not, of course, please everyone. Too little significance, it appears to this reviewer, has been given to this outside material dealing with succession procedure (such as acceptance of successions, appointment of administrators, executors and curators of vacant successions, their accountings, discharge and removal, the probate of wills and the sale of succession property) tutorship, interdiction, and emancipation procedure.

It would also appear that the provisions of the Civil Code on such matters as the action of boundary¹ and the revocatory action² should have been correlated in this revised edition of the Code of Practice, but, to the contrary, not even adequate indexing or cross

1. Art. 824 et seq., La. Civil Code of 1870.

2. Art. 1970 et seq., La. Civil Code of 1870.

reference thereto is given. The same criticism might be justified as to the exclusion of the provisions of the Civil Code on parol evidence,³ particularly since certain statutory provisions on this subject are correlated.⁴

The cross references under Article 755 of the Code of Practice to the special laws permitting summary process are somewhat incomplete. Executory process, too, is not as fully treated as one might expect. For instance, the author correlates with Article 732 of the Code of Practice the statutory provisions covering executory process on a community debt when one spouse is dead;⁵ yet the equally important statute permitting executory process, contradictorily with an heir or attorney appointed for the succession, where the debtor is dead and no administrator has been appointed,⁶ is not given even by cross reference. Other omissions in correlated matter pertaining to executory process include the deficiency judgment statute⁷ and the statutes controlling executory process against a corporation.⁸

The cross references under Article 285 to separate statutory provisions permitting provisional seizure are likewise incomplete.⁹ The same criticism may be made of the cross references to Article 165—the exceptions to the rule of domicile¹⁰—and of the cross references to the interpleader statutes, Article 309.80.¹¹

The annotations to decisions are copious and extremely useful. Errors, of course, were inevitable in such a wealth of annotations. For instance, *Burnett v. Johnston*¹² is annotated under the statute giving the plaintiff a right to require a cost bond,¹³ yet this decision of a court of appeal was expressly repudiated by the supreme court.¹⁴ Annotations are given to Article 165 (6), which provides exceptions to the rule of domicile that joint tortfeasors

3. Art. 2275-2278, La. Civil Code of 1870.

4. Dart's Stats. (1939) §§ 2024, 2025, appearing as Articles 462.24 and 462.25.

5. Dart's Stats. (1939) § 9734.

6. Id. at § 5021.1.

7. Id. at § 5021.6-5021.8.

8. Id. at § 1162.

9. Id. at §§ 5081, 5088, and 5101.4 are omitted.

10. Id. at §§ 811 and 5143 are not given.

11. Although Dart's Stats. (1939) § 5126, concursus under public works contracts, are shown, yet Dart's Stats. (1939) § 5109, concursus under private construction, is inadvertently omitted.

12. 19 La. App. 213, 140 So. 48 (1932).

13. Art. 207.1, La. Code of Practice of 1870 as amended.

14. *Jones v. Williams*, 191 La. 129, 184 So. 565 (1938).

may be sued at the domicile of one, yet no annotations are given of certain important qualifications.¹⁵

On the whole this revised edition of the Code of Practice is a decided improvement over the 1932 edition by the publisher and will be of great value to the bench and bar. The author and publisher have added a very valuable book to their very serviceable set.

BEN R. MILLER*

THE TORT LIABILITY OF PUBLIC OFFICERS, by Leon Thomas David.
Public Administration Service, Publisher, Chicago, 1940. Pp.
vi, 93.

The focus of Mr. David's booklet is the tort liability of officers and employees of municipal corporations in California although some attention is given other classes of public "officers" and comparative materials.¹ He pretty well gets over the conventional categories in terms of the California decisions and statutes. Generalizations that sweep over state lines are none too reliable in such matters. Mr. David's prime concern with his own bailiwick renders his work much more pointed and at the same time provides us an expository monograph of comparative value in other jurisdictions.

Our author's first concern is to indoctrinate his readers with certain "fundamental concepts." He adverts at this stage to sovereign immunity from tort liability but in a rather meagre fashion. More attention is given the business of defining "office" and "officer" and distinguishing officers from employees.

Respondeat superior does not apply as between superior and subordinate municipal officers, we are told, because both are instruments of the sovereign and stand on an equal plane as "servants of the law." More plainly put, this is to say that the business being conducted is not that of the superior, but of the public, and the organized public, not he, should bear the risk where he is not personally at fault.

The discussion of the liability of officers acting under unconstitutional statutes is to be tempered now by reference to the im-

15. *Alpha v. Rose*, 171 La. 753, 132 So. 222 (1931); *Gordon v. Bates-Crumley Chevrolet Co.*, 182 La. 795, 162 So. 624 (1935).

* Member, Baton Rouge Bar.

1. The materials upon which Mr. David's monograph is based are to be found in a series of articles by him which first appeared in the *Southern California Law Review*.