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Review of Digest of Procedural Statutes and Court Rules: Pleading, Joinder and Judgment Record, by E. G. Brown

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RECENT BOOKS

This department undertakes to note or review briefly current books on law and matters closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

DIGEST OF PROCEDURAL STATUTES AND COURT RULES: PLEADING, JOINDER, AND JUDGMENT RECORD. By *Elizabeth Gaspar Brown.* Ann Arbor: The Overbeck Company. 1954. Pp. 174. $2.

This is no bedside reader. One is, I suppose, adequately warned by the title to expect something less agreeable than a collection of short stories from the *New Yorker.* Digests are not made to be read seriatim. Lawyers, familiar with case digests, know better than to expect anything very stimulating to develop from an evening spent in random reading of, say, volume 22 (Mayhem to Motions) of the *Third Decennial Digest.* One is reminded of the man who said that the dictionary would be interesting reading if it didn't change the subject so often. Well, a digest doesn't change it often enough.

It comes as something of a surprise, therefore, to find interest in this pioneer volume—to find it, in fact, in its novelty and in the vistas which it may open.

No common lawyer needs to be persuaded of the importance of case digests. Only through them can he find the approximate state of the decisions applicable to his current problem. In statutory matters, however, and particularly as to procedural statutes, he feels little need for a digest of any kind. The statutes applicable to his problem usually are fairly evident with textual and annotational help.

Why, then, a digest of statutes, particularly procedural statutes? Primarily for two reasons: first, for the proper training of law students. The study of law is best undertaken in the context of a "comparative" emphasis. The Ohio lawyer is a better lawyer if he knows how Ohio's law stands in comparison with the law in the federal courts and in the courts of Michigan and New York and Illinois and the other states. Statutory digests make it possible for the student to learn rather quickly and accurately what the general legislative treatment of a particular problem has been. Yet discussion can be too general, and he should pinpoint his own state's position in many of these matters. Here, too, a digest of procedural statutes and court rules is useful to inform him as to where his own state's formulation fits into the general pattern.

The second justification for a digest of procedural statutes is the use that can be made by individuals and groups interested in legislative reform. Although there may be value in proceeding to reform without the prejudice of knowledge of what other jurisdictions have done, most successful reform is based upon a thoroughgoing understanding of what has been done by other legislatures and courts in similar circumstances. This digest makes it possible to know how all

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other jurisdictions have addressed a given procedural problem at the statute and court rule level. The value of such a study for this purpose is plain.

The procedural matters accumulated in this volume include general rules of pleading (e.g., what a statement of claim must include; necessity for reply), pleadings in particular actions (e.g., libel and slander; ejectment), general rules of joinder (of parties and claims), joinder in particular actions (e.g., foreclosures; replevin; partition), and the form and contents of a judgment record. Does the reader want to know the statutory (or rule) pattern with respect to class suits? All these are digested on pages 97 and 98, giving both a general picture and the specific type in any one jurisdiction. What defenses must be asserted affirmatively? About three dozen are listed on pages 31 to 33, with supporting lists of states. These samples suggest the kind of thing available in the *Digest*.

It should be understood that even as a case digest usually does not alert one to applicable statutes, neither does a statutory digest eliminate the necessity of looking to judicial interpretation of these same statutes. For example, one does not learn by reference to section seven of digest two ("Pleading Specific Performance of Contract") that in California a specific performance plaintiff must allege facts indicating not only that there was consideration, but also that it was "full and adequate." The reason, of course, is that the principle derives from cases, not statutes or court rules. In instances where there appears to have been an omission, research discloses that the principle is embodied not in a statute or a rule but in decisional law. To the extent that it has been feasible to test sections of the *Digest* in preparation for this review, it appears complete. Employed for the designed purposes, it will prove a helpful time-saver.

The task of digesting statutes and rules is a difficult one. Mrs. Brown has built on earlier experiments by William Wirt Blume, published in Stason and Blume, *Cases and Materials on Pleading and Joinder* (1948), and the current volume was prepared under his supervision. The scheme here employed may not prove the ultimate in useful organization. But it is an interesting and entirely competent beginning. As legislatures continue to grind out a heavy grist of statutes, the importance of classifying, ordering and comparing them increases. It is probable that, when statutory digests become more common some years or decades hence, the lawyers of that day will look back on this landmark work at the University of Michigan as the beginning of the whole development.

After the reflections cast in the beginning of this review, it would be unfair to conclude without saying that for the serious student of procedure this *is* an interesting book, because it is a gold mine of information about American procedural statutes and court rules, and because it may be a harbinger of an entirely new phase of legal scholarship.

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